

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE.

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WESTERN TOWBOAT COMPANY,	)	CASE NO. C20-00416-RSM
	)	
Plaintiff,	)	Seattle, Washington
	)	
v.	)	June 30, 2021
	)	9:00 a.m.
VIGOR MARINE, LLC,	)	
	)	BENCH TRIAL
Defendant.	)	Vol. 3 of 5
	)	

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE

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1 PROCEEDINGS

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2

3 THE COURT: All right, counsel. Welcome back. We're

4 back in session, and I believe you were starting your

5 examination of Mr. Keen.

6 MR. SIMMS: Yes, sir.

7 DANIEL KEEN,

8 having been previously sworn, testified as follows:

9 REDIRECT/CROSS-EXAMINATION

10 BY MR. SIMMS:

11 Q. Mr. Keen, between the time that you left the stand last

12 night and now, did you discuss your testimony with anyone?

13 A. Discussed as in -- well, I asked my team if I was presented

14 as a competent person, yes.

15 Q. Did you have any other discussions with the team about your

16 testimony?

17 A. Not in detail, no.

18 Q. Did you have any discussion at all, in any form, other than

19 you did really well with your testimony yesterday?

20 A. No; just did really well.

21 Q. Nothing else?

22 A. Nothing else.

23 Q. This is the -- right to the GHS program here.

24 So let's put exactly where you were when you were looking

25 at this and reporting it back to Western. Okay?

1           You were at home? You were out to dinner? You were --  
2           what were you doing? Where were you? Let me show you --

3           A. I believe this is the email from 9:30-something p.m.,  
4           correct?

5           Q. Yes, it's 9:30.

6           A. Or 9:43 p.m. I was home when I sent this email.

7           Q. Okay.

8           And that evening, before you arrived home, were you out --

9           A. Yes, I was out to dinner with my wife. I was also working  
10          on the cases, working through it. Like I explained yesterday,  
11          it's quite the in-depth, trial-and-error process, getting  
12          through all the situations.

13          Q. Okay.

14          So you said that at first -- when you first got the call,  
15          the report was about a three-foot list, right?

16          A. I do not recall a number being evaluated. My recollections  
17          or first understanding is there was a list, and then pictures  
18          shared with me, it looked -- appeared to be a list, but I didn't  
19          really have a rough number -- you know, number established.

20          Q. The pictures shared with you. So there was the first  
21          report, and then when you saw the pictures, you could tell the  
22          list had become worse, right?

23                 MR. BOYAJIAN: Objection; mischaracterizes. I believe  
24          Mr. Keen said he saw a picture.

25                 THE COURT: Well, objection to the form of question.

1 Maybe you can just rephrase that.

2 Q. (By Mr. Simms) From the time that you got the first report  
3 of the list --

4 A. Okay.

5 Q. -- to the time that you saw the photo -- right?

6 A. Okay.

7 Q. Okay.

8 -- something told you that the list had increased between  
9 those times, right?

10 A. Not necessarily, no.

11 Q. Okay.

12 So when you saw the photo, were you under the impression  
13 that the list had not increased?

14 A. No. I saw the photos; under the impression that the photo  
15 was the condition discussed.

16 Q. Okay. There were running lights on the 70, weren't there?

17 A. Yes.

18 Q. And batteries powered those?

19 A. Batteries solar-charged.

20 Q. And those batteries could have run the -- what do we call  
21 it? -- they would have run the List-O-Light system, couldn't  
22 they?

23 A. I don't know that for sure, sir.

24 Q. It's not something that you looked into?

25 A. I'm not an electrical designer, so the first step there in

1 evaluating which power source is required for the List-O-Light  
2 system, if it's AC or DC voltage there, amperes drawn and  
3 determined if you had the appropriate length of battery, but  
4 that's as far as I would know. I wouldn't be able to evaluate  
5 from there.

6 Q. Did anybody determine that the solar battery would be  
7 sufficient to operate the running lights?

8 A. The solar battery in the system, I believe, was an enclosed  
9 box that you purchase off the shelf and is by the manufacturer,  
10 designed to run its own system.

11 Q. Okay. All right.

12 So that's -- and how many of them were there on the 70  
13 running the running lights?

14 A. I believe we established yesterday there was three of them:  
15 A port, starboard, and stern light.

16 Q. So there were three independent batteries?

17 A. Correct.

18 Q. And what's the cost of the battery, solar-operate?

19 A. Sir, I'm not sure. I believe Western supplied the  
20 batteries.

21 Q. Western supplied the batteries?

22 A. I believe so. The magnet lights -- or -- you know, the  
23 running light. It's a battery -- it's a box. The thing is  
24 about the size of these books here -- for the court -- and,  
25 typically, a light on top and a little solar cell, and the

1 batteries are inside the box.

2 Q. So back to our GHS.

3 So here it is. The data that you were running through the  
4 GHS system, when was the last time that you had loaded data into  
5 the GHS system about the 70?

6 A. Last time, as in when, sir?

7 Q. So taking the time that you're looking at this, the last  
8 time before the time you opened your laptop on the 25th and  
9 looked at this. When had you last loaded any data about the 70?

10 A. Just so I understand, to be clear. You're asking me when  
11 is the last previous time I operated the GHS program from this  
12 instance here?

13 Q. Okay. Well, let's try that.

14 A. It was creating the surface area calculation for Chris  
15 Law's tow distance counts -- Chris Law's calculations.

16 Q. And the purpose of looking at surface area calculations was  
17 to decide what power was needed to pull the tow?

18 A. Yes, as we established that as part of it yesterday.

19 Q. What other part did those calculations play?

20 A. Well, surface area fell into the calculations we used in  
21 the tow manual to determine tow resistance, which size of the  
22 tug and the size of the towing equipment, of the jewelry  
23 associated connecting the tow to the tug.

24 Q. So that calculation determined the power of the tug needed  
25 and the towing configuration needed to tow, right?



1 A. Not the configuration; validates the size of the equipment  
2 in the configuration.

3 Q. Okay. Gotcha.

4 So you worked with the program to determine that with Chris  
5 Law, the insurance person. Before that, when was the last time  
6 you used the GHS program for the 70?

7 A. I do not recall; however, I used it quite extensively at  
8 the time. So we'd have to look back at logs to understand what  
9 I -- actually, there are no logs for the system. I apologize.

10 Q. But the GHS program that you were looking at the night of  
11 the 25th did not have the extra tanks that you had added in the  
12 70, right?

13 A. All the floodable volume was accounted for in that model,  
14 yes.

15 As you see there, it does not -- the pontoon section, as we  
16 described, had 32 tanks at that point. The additional four  
17 tanks from the 28 listed here are derivatives of Tank 5, Tank 6,  
18 Tank 11, and Tank 12. And we separate out a portion of the  
19 existing tank here to create additional compartmentalize.

20 So, in fact, what I demonstrated with this model is the  
21 assumption that we'd lost that compartmentalization as well,  
22 helping to find a worst-case scenario.

23 Q. But this model did not have a separate entry for the new  
24 tanks, right?

25 A. It did not have a separate entry, but then again, as I

1 stated, the model still is defined appropriately for the amount  
2 of value or buoyant lift or loss of volume capable.

3 So by adding the tanks and definition to this list in the  
4 line up here, as you see, there would be nothing -- no  
5 additional volume added to the bottle.

6 Q. Okay. Let's go to Exhibit 10.

7 This is a document that Vigor kept in its files, right?

8 A. Yes, yes.

9 Q. And it's a document that you would refer to from time to  
10 time about the 70, right?

11 A. For operation of the dry dock, yes.

12 Q. And the same for the 69?

13 A. Yes.

14 Q. It's a document you used in the ordinary course of your  
15 business to operate the 70?

16 A. To some extent. A lot of the information in this document  
17 is irrelevant for this day and age. It was written in the '40s.  
18 There are some components on the dock that don't exist anymore.  
19 Both the 69 and 70, they were obsoleted by the Navy, removed.  
20 But the key things, like the mechanicals and some general  
21 arrangements, what remains.

22 Q. Okay. All right.

23 MR. SIMMS: So I'd like to have this entered as  
24 Exhibit 10 as a document made and kept in the ordinary course of  
25 business at Vigor and relied on, at least, for some things.

1 THE COURT: This is not stipulated?

2 MR. SIMMS: It is not.

3 THE COURT: Any objection?

4 MR. JARRETT: Well, this is different than the  
5 Exhibit 10 that's in the Western trial exhibits. It's --

6 MR. SIMMS: It's the USN dry dock operating manual. I  
7 got Exhibit 10. This is Exhibit 10 on what we printed out and  
8 sent to the court. It's the U.S. Navy Floating Dry Docks  
9 Manual. We marked it Exhibit 10.

10 MR. JARRETT: Your Honor, my only problem is, I don't  
11 have the full document that we're being asked to stipulate to at  
12 this time.

13 So we have Exhibit 10 that Western submitted as a trial  
14 exhibit, and I think I understood Mr. Simms to say this is a  
15 different thing than that. But I don't -- I don't -- so I guess  
16 my problem is, I don't know what's going on here, Your Honor, I  
17 guess is the problem.

18 MR. SIMMS: This was the one we put in, the whole 217  
19 pages.

20 THE COURT: All right. I just want to make sure that  
21 we're talking about the same thing, and that's the only concern  
22 I've got.

23 So let me just defer a ruling. We don't have to admit it  
24 right at this second, I don't believe. Maybe during the break,  
25 you can make sure it is the same, or else that they have an

1 opportunity to take a look at the manual.

2 MR. SIMMS: Yes, Your Honor.

3 THE COURT: All right.

4 Q. (By Mr. Simms) So we talked about the 2013 ultrasound  
5 survey done for the 70.

6 A. Yes.

7 Q. And that survey was done for the purposes of NAVSEA  
8 certification of the 70, correct?

9 A. That is not what I said yesterday, sir.

10 Q. Okay. It was not done for NAVSEA certification?

11 A. That is not what I said yesterday.

12 Q. What did you say yesterday?

13 A. It was done when we exited NAVSEA certification and  
14 evaluation of the dry dock for use in lifting commercial  
15 vessels.

16 Q. So was there an evaluation of the 70 done at that point?

17 A. Please be more specific. Evaluation?

18 Q. I'm sorry?

19 A. Please be more specific with your valuation. "Valuation"  
20 or "evaluation"?

21 Q. Oh. Evaluation of the 70. Gotcha.

22 A. Okay.

23 Q. And what were you evaluating with that?

24 A. We were looking at the -- you know, the structural  
25 capability of lifting the dry dock, you know -- lifting the dry

1 dock, sorry -- lifting commercial vessels with the dry dock.

2 Q. Okay. And what was the result of that evaluation?

3 A. The result was we continue with commercial work; however,  
4 one of the largest vessels that dock used to lift up was a polar  
5 icebreaker, large vessels. So we decided to no longer lift  
6 polar icebreakers with the dry dock.

7 Q. Okay.

8 And after that, Vigor never repaired the 70 so that it  
9 could lift polar icebreakers?

10 A. Not to lift polar icebreakers, no. Repairs were ongoing,  
11 continuously, on the dock, though.

12 Q. Okay. And let's talk about those repairs.

13 So if I were Richard Shaw, going through all the tanks and  
14 all the things that you said that he did, three years later, in  
15 2016, I'd be able to see those repairs, right?

16 A. Yes.

17 Q. I'd be able to see them because there would be big plates  
18 cut out and welded in over holes.

19 A. Well, sir, you don't always repair only holes. You repair  
20 areas that have -- you know, some wastage, et cetera, but there  
21 was newer steel, yes, on the dock.

22 Q. I'd be able to tell the difference between this newer steel  
23 and what was replaced, right?

24 A. Generally speaking, yes.

25 Q. Okay. And that would be obvious in the photograph that

1 Shaw took, right?

2 A. At times. I say that because even new steel starts to turn  
3 brown and rust, so it blends in.

4 Q. All right.

5 So if we went to the Vigor records to see exactly what  
6 repairs are done, would the Vigor records show that?

7 A. Not necessarily, no.

8 Q. Why?

9 A. Vigor does not maintain records on its own equipment in the  
10 traditional sense as it would for a ship-repair project, where  
11 everything is itemized out for a customer project. You know, we  
12 have staff on site at times. It is a mere effect of just  
13 bringing the staff to the location of the repair, and executing.

14 Q. Okay. So that's why we never got records showing repairs,  
15 yes?

16 A. Yes.

17 Q. So you use this table from the towing manual, G-4, to make  
18 the calculations that you made and to correct Chris Law's,  
19 right?

20 A. Correct.

21 Q. Okay.

22 The towing manual is a source that you regularly use in  
23 your business, isn't it?

24 A. "Occasionally" would be a more proper word.

25 Q. But this is a document that's kept -- you have it on your

1 shelf in your office, I expect.

2 A. No. We use it when referenced to, lately, by customers.

3 MR. SIMMS: I'd like to enter Exhibit 14.

4 MR. JARRETT: May we see the cover again, please,  
5 counsel, of the document you have up on the screen.

6 MR. SIMMS: Sure. Is this another mismatch between  
7 what you all have?

8 MR. JARRETT: I'm looking to see if there is a Bates  
9 number on this page, please. The bottom right-hand corner would  
10 be helpful.

11 MR. SIMMS: This was one we got right off the  
12 Internet.

13 MR. JARRETT: Did we object -- oh, I see. Your Honor,  
14 I think we reserved objections to Exhibit 14.

15 I understand what we're doing now, and we don't have those  
16 objections. We'd waive that objection to 14.

17 THE COURT: Thank you. Exhibit 14 is admitted.

18 (Exhibit 14 admitted.)

19 Q. (By Mr. Simms) And so you were involved with the 69 tow,  
20 right, from Portland to Seattle?

21 A. Sorry. Can you please speak up?

22 Q. Sure.

23 You were involved in the Portland to Seattle tow of the 69,  
24 right?

25 A. That's correct.

1 Q. Okay.

2 And you received the tow-suitability survey from Richard  
3 Shaw?

4 A. Yes.

5 Q. Okay. And that's it right there. Okay.

6 MR. SIMMS: Move to have that admitted.

7 MR. BOYAJIAN: Objection, Your Honor. This is not a  
8 tow-suitability survey. This is a towing recommendation sheet,  
9 which is one small part of the overall tow-suitability survey.

10 MR. SIMMS: And I'm going to -- thank you. I'm going  
11 to move to admit 62 and 63, the Shaw complete suitability and  
12 recommendations.

13 MR. BOYAJIAN: We have no objection on either of these  
14 two.

15 THE COURT: Thank you. 62 and 63 are admitted.

16 (Exhibits 62 and 63 admitted.)

17 Q. (By Mr. Simms) So we talked about Heger, and Heger is the  
18 dry dock architect that you use almost exclusively, right?

19 A. They're dry dock engineers, yes.

20 Q. And you are a naval architect by background.

21 A. Correct.

22 Q. SUNY Maritime Naval Architecture?

23 A. Yes.

24 Q. And what year is your degree?

25 A. 2009, sir.



1 Q. Okay. And that's what gives you the qualifications to do  
2 the calculations you did, right?

3 A. That's a part of it, sir. Experience would be another  
4 part.

5 Q. But you found Heger to be a very reliable source of  
6 engineering information --

7 A. Yes.

8 Q. -- that you rely on?

9 A. Yes.

10 Q. Another name for this type of dock, the 69, the 70, the 71,  
11 is a Rennie dock, right?

12 A. No.

13 Q. It's not?

14 A. It is not.

15 Q. It's not a pontoon dock?

16 A. It is not a Rennie-designed dock, sir.

17 Q. Okay. What's the difference between this and a Rennie  
18 dock?

19 A. This is a Harris-designed dock.

20 Q. Okay. Is there a difference between a Harris design and a  
21 Rennie design?

22 A. Yes, there is, sir.

23 A Harris design has, as we've discussed, the three  
24 sections: Two smaller end sections and a larger mid-body.  
25 Rennie-designed dock, sir, is a series of

1 nearly-identical-length pontoons that float freely, independent  
2 up on themselves. And then a single wing-wall section, side  
3 wall, installed on those pontoons to make the system rigid.

4 Q. Okay. All right. Well, let's take a look here.

5 Have you ever looked at the Heger Dry Dock website?

6 A. Yes.

7 Q. Okay.

8 And then they've got a library here, down here, Heger  
9 Publications.

10 Before we go past this, have you ever used the American  
11 Bureau of Shipping Rules in any work that you've done with the  
12 70?

13 A. With the 70? No.

14 Q. Excuse me?

15 A. With the 70, no.

16 Q. And how about the DNV, the Det Norske Veritas? Do you ever  
17 use those rules for classifications of floating docks?

18 A. I have used DNV for other things in 2017.

19 Q. Okay. And do those two guides provide reliable formulas  
20 for determining the longitudinal strength of dry docks?

21 A. I didn't use them in that sense, so I couldn't comment. I  
22 don't know.

23 Q. And so we'll go down to Heger Publications. Have you ever  
24 seen their *Dockmaster's Manual*?

25 A. Yes, I have.

1 Q. And what I did was to pull down this. Okay.

2 So this is the Dockmaster's training manual, and it comes  
3 from Heger, so it's reliable, isn't it?

4 A. Yes.

5 Q. And here, this is -- the 70 is pontoon dock, right?

6 A. By the drawings and descriptions there, I don't necessarily  
7 agree with that.

8 Q. Uh-huh. Okay.

9 So Heger says here that there are three types of floating  
10 dry docks: "Sectional, box, or one-piece." If the 70 was any  
11 of these, what would it be?

12 A. It's hard to say what Heger would consider it to be. In my  
13 opinion, it would be a box or a one-piece.

14 Q. But there were three pieces for that dock, right?

15 A. That's correct, with the intention, though, that the pieces  
16 weren't designed to be removed, in that sense, yes. I mean,  
17 they were for as we described, but it wasn't a normal course of  
18 activity.

19 Q. Okay.

20 So here, down, they're describing the pontoon sections can  
21 usually be self-docked.

22 A. Uh-huh.

23 Q. That was the 70 pontoon sections could be self-docked

24 A. Yes.

25 Q. How about this. Here's what Heger says: "Ocean tow is

1 usually not possible unless the dock is cut in shorter sections  
2 due to the lower longitudinal strength."

3 MR. BOYAJIAN: Your Honor, objection, if I may?

4 Mr. Keen has said that the YFD 70 is not a Rennie-type  
5 dock. These are instructions for towing Rennie-type docks, as  
6 Mr. Simms has highlighted at the top of the page.

7 I'm not sure where we're going with this line of  
8 questioning about a completely different type of dock.

9 THE COURT: The objection is overruled. It says,  
10 "Pontoon or Rennie dock." The witness can explain his  
11 understanding of what this section means.

12 Q. (By Mr. Simms) So Rennie, and the other type is what?

13 A. Harris.

14 Q. Harris.

15 A. Harris design.

16 Q. Well, let's see if the *Dockmaster's Manual* has anything  
17 about a Harris dock.

18 Okay. I'm searching it, and either I'm wrong or Adobe is  
19 wrong, but there's nothing in here about Harris design.

20 A. This manual was developed for the operation of dry docks in  
21 a commercial facility, or a facility. It was not directed for  
22 towing the docks.

23 Q. Well, here it's talking about towing, so --

24 A. It is.

25 Q. So let's go down a little bit more in this document.

1           And this is a document that you've used and relied on,  
2     right?

3     A.    Yes.

4     Q.    Okay.

5           So longitudinal strength. Lloyd's rule for longitudinal  
6     bending; it has a number of things in here. Okay.

7           And then down here -- and I'm going to -- this is page --  
8     this is page 1-20, and it's in bright red. It says, right below  
9     this, "For docks that will be towed in open water, a separate  
10    analysis of stresses induced by waves must be conducted."

11    "Must." "Must." But you didn't do that for the 70, did you?

12    A.    We did that with a structurally same dock, the 69. To  
13    understand -- to go into it further there, Vigor evaluated 69  
14    for those four cases, and also evaluated Dry Dock No. 3, which  
15    is a proper Rennie-style dock in Portland, and that dock was not  
16    suitable to be towed because it was a Rennie-style dock. So,  
17    therefore, that's why the business decisions were to move the  
18    YFD 69 to Seattle instead.

19    Q.    The one you were just talking about, that was the Emerald  
20    Sea, right?

21    A.    No, no, that's not what I was talking about.

22    Q.    Okay. Which is the one that is the Rennie-type dock?

23    A.    Portland Dry Dock No. 3.

24    Q.    Okay. It's not the 69. That's a different one?

25    A.    That's correct.

1 Q. So here, "For docks that will be towed in open water, a  
2 separate analysis of stresses." It doesn't seem to be limiting  
3 what sort of dock we're talking about. You just said for the  
4 Rennie-type dock, you did analysis, but there was no analysis  
5 done for the 70, right? No separate analysis for stresses?

6 A. No separate analysis was done for the 70 due to the fact  
7 the 69 was the same dock structurally.

8 Q. Okay.

9 So, "By limiting longitudinal directions to values lower  
10 than maximums set by the designer, you will never overstress the  
11 dock."

12 There were no consideration of longitudinal deflections,  
13 right?

14 A. Sir, that statement is relevant to the operation of a dry  
15 dock when you're floating the tanks or deballasting the tanks,  
16 not for lifting a ship.

17 Q. Okay.

18 Now, the 70 was sold to Amaya Curiel for \$10,000, right?

19 A. Okay.

20 Q. There was a value done on the 69, wasn't there?

21 A. There likely would have been. I'm not aware of it.

22 Q. Okay. All right.

23 And I want to talk about the 71. The 71 was a sister  
24 dock -- is a sister dock, right?

25 A. Yes.

1 Q. It's kept down in San Francisco?

2 A. You're telling me that. I'm not very familiar with it at  
3 all.

4 Q. Okay. We'll ask Heger about the 71.

5 And I'll go down here, and this is the value of the 71,  
6 which they called the Eureka. This is the 2018, two years after  
7 the tow. But the valuation, "Our opinion is the present  
8 condition of the Eureka, the 71, has a negative value."

9 At the time of the 70 sale -- and let's just do the math.  
10 Okay. \$10,000 -- how much did Vigor commit to spend to get the  
11 70 towed to Ensenada?

12 A. I don't know that number, sir.

13 Q. Okay. Way more than \$10,000, right?

14 A. Okay.

15 Q. So at the time of the tow, the 70 had a negative value,  
16 right?

17 A. Okay. You're telling me. Sure.

18 Q. Yeah, and I can do that. Yeah. Okay.

19 Now, down here, 2015, it says South Port Atlantic valued a  
20 sister dock for the Eureka for \$750,000. Right?

21 Before the 69 was moved to Seattle, there was a valuation  
22 done of the 69 for \$750,000, wasn't there?

23 A. I guess so. I'm not aware of that valuation.

24 Q. Yeah. That was a part of insuring -- the 69 was insured,  
25 right, before it got moved up to Seattle?

1 A. I sure hope it was.

2 Q. Right, because Vigor had put a lot of work in, at its own  
3 shipyard, for the 69, to prepare it for the tow, right?

4 A. Yes, we performed a dry docking on the 69 before the tow.

5 Q. You had a Heger survey recommending different types of tow,  
6 including a one-piece. You paid for that. How much was that?

7 A. I do not know. I did not commission that report.

8 Q. Okay. But Heger doesn't do things for free like that,  
9 right?

10 A. Not usually, no.

11 Q. And then you had two separate Heger surveys for the  
12 one-piece tow, analyzing longitudinal stresses and other  
13 stresses that the tow would experience on the trip between  
14 Portland and Seattle, right?

15 A. I'm sorry. Did you say two other surveys --

16 Q. Yeah.

17 A. -- or two other reports?

18 Q. Yes.

19 Let's take a look. This is Vigor's exhibit, and we've  
20 entered it. This is 95.

21 And so after the initial Vigor report -- the initial Heger  
22 report, Vigor had two others done. Okay? This was done right  
23 before the tow, May 2013, "Analysis of the Ability of the Dry  
24 Dock to Resist Ocean-Wave Bending." Did you ask for that to be  
25 done?



1 A. No, I did not commission this. This was in 2013.

2 Q. Who did?

3 A. I'm not sure. Can you scroll down to the date again,  
4 please?

5 Q. Sure.

6 A. So I started Vigor in May of 2013, so this was likely  
7 commissioned before my time.

8 Q. Okay. All right.

9 Here's another one. Okay. All right.

10 Well, for the 70, and during all this time, from the  
11 time -- and let's talk about, for a second, the --

12 MR. SIMMS: Before I forget this, though, I'd like to  
13 move to admit as an exhibit for rebuttal, the *Dockmaster's*  
14 *Manual*, which Mr. Keen says he uses and relies on.

15 THE CLERK: Is there a number?

16 MR. SIMMS: That would be Western 75.

17 THE COURT: This is the Heger one?

18 MR. SIMMS: This is the Heger one, yes.

19 THE COURT: Mr. Boyajian?

20 MR. BOYAJIAN: We don't have a copy, and, second,  
21 we're not clear what rebuttal as to...

22 MR. SIMMS: Okay. Copy's on the web, and I will email  
23 to everybody. And what it is in rebuttal to was the idea that  
24 it was reliable, based on Heger's calculations of the 69, to do  
25 a tow, open ocean, to Ensenada.

1 THE COURT: Did we clear up the issue about the Rennie  
2 versus the Harris?

3 MR. SIMMS: We --

4 THE COURT: Does this mention the 70?

5 MR. SIMMS: It does not -- well, let's see. That's a  
6 good question.

7 MR. BOYAJIAN: Your Honor, I suppose if Mr. Simms is  
8 saying that it rebuts something in the Heger conclusion in the  
9 analysis of the YFD 69, I think that generalized information  
10 available on Heger website would not contradict or rebut two  
11 direct studies for which Heger was paid to conduct specific  
12 analyses as to the YFD 69 and, by extension, due to the fact  
13 they are structurally identical, the YFD 70.

14 This is just a generalized available piece of information  
15 on the website.

16 MR. SIMMS: That Mr. Keen says he has looked at. This  
17 is a training manual.

18 Q. (By Mr. Simms) You use this for your own training, right?

19 A. For calculations of lifting vessels, yes.

20 MR. BOYAJIAN: I suppose my question is, Your Honor,  
21 what does it rebut? This doesn't rebut or contradict Heger's  
22 direct analysis and conclusions about the particular dry dock.

23 THE COURT: Aside from that, counsel, my concern is,  
24 unless you tie it specifically to the dry dock at issue here,  
25 I'm not going to go hunting through this and looking it --

1 you've already inundated me with a ton of paper here, and I want  
2 to be able to get to what is critical to this particular case.

3 So unless you can show me where it refers to the type of  
4 dry docks we're discussing here, either the 69 or 70, I don't  
5 see how it's relevant.

6 MR. SIMMS: We'll hear a little later from the Heger  
7 Dry Dock man himself, Mike Naylor, so we'll save this for him.

8 THE COURT: Thank you.

9 Q. (By Mr. Simms) So let's -- we'll go back to the, I guess,  
10 genesis, is the right word, of how the one-piece tow came about.

11 And you had -- you've known Russ Shrewsbury for a long  
12 time, right?

13 A. Since 2013.

14 Q. As a matter of fact, to this day, Western continues to be  
15 the first tug company that Vigor calls when it needs something  
16 moved, right?

17 A. For harbor assist, yes.

18 Q. Okay. For harbor assist, the first company that -- you're  
19 still doing business -- that is, Vigor is still doing business  
20 with Western?

21 A. Correct, for harbor-assist work.

22 Q. And other work like this is pretty rare for Vigor, right?

23 A. We do an amount of it. It's not as frequent as harbor  
24 assist, yes.

25 Q. And so you've known Russ -- how long have you known Russ

1 Shrewsbury?

2 A. Since 2013, sir.

3 Q. Do you consider him to be a friend?

4 A. Yes, a friend and a colleague.

5 Q. Yes. Okay.

6 And so was it in August of 2016 that you first started  
7 talking with Russ about moving this dock?

8 A. I do not recall exactly when we started talking about that.

9 Q. Okay.

10 Did the conversation go something like this: Hey, Russ,  
11 could you guys move this dock?

12 A. I believe the conversation was of the sort of asked Russ  
13 and Bob to come down to the yard and see if we can discuss  
14 moving the docks.

15 Q. And so you discussed moving the dock, yes --

16 A. Yes.

17 Q. -- with them, and you asked them to give you a quote?

18 A. Uh-huh, and also if they thought it was feasible.

19 Q. Uh-huh. Okay.

20 And you said, We want to tow this as-is to Ensenada?

21 A. Yes.

22 Q. And what else did they say to you during that get-together?

23 A. I do not recall the conversation well enough to quote that,  
24 so I apologize.

25 Q. Okay. And then they gave you a quote for a one-piece tow

1 to Ensenada?

2 A. Yes, and I was pricing and quoting the contracts to Paul  
3 Torrey, who manages that portion.

4 Q. And Western's was the only bid that came in for this?

5 A. I do not recall if Paul asked for any other bids.

6 Q. Okay. All right.

7 So then you get the bid and all that stuff, and then you  
8 start working on the 70 to make it fit for the tow, right? Or  
9 your due diligence.

10 A. We started preparing the dock for the tow.

11 Q. All right. And so you've testified -- and one of the big  
12 points here is due diligence -- about what Vigor did.

13 Is there anything that you haven't described already that  
14 Vigor did to be duly diligent to prepare the 70 for a one-piece  
15 tow to Mexico?

16 A. Not that I'm aware of, sir. I believe that I named  
17 everything we did; however, it was some time ago, so smaller  
18 items might have fallen -- you know, skipped my memory.

19 Q. But there are no records that show exactly what you did,  
20 are there?

21 A. Not in depth, no.

22 Q. Not in depth?

23 A. No. Sorry.

24 Q. What records are there?

25 A. Whatever email or discussions -- would discuss with Rich

1 Shaw. That's it. It was more of a deck-plate-driven job.

2 Q. Ten thousand man hours, is that what you said?

3 A. No, no.

4 Q. A thousand man hours?

5 A. Approximately a thousand hours.

6 Q. So there were a thousand person hours that went into this  
7 due diligence, but no records to confirm that?

8 A. Correct, sir.

9 Q. So you go through this and -- tell me what a naval  
10 architect does.

11 A. It depends on the job assignment, sir. It's more along the  
12 lines of what does a civil engineer do. It depends on what job  
13 they have.

14 Some cases, I've been a stability engineer for ABS. Other  
15 cases, I was a naval architect for U.S. Navy at MSC and I  
16 evaluated dry dockings; built small foundations or arrangements.  
17 So it's a variety of things onboard vessels.

18 Q. Uh-huh. Okay. All right.

19 And you were performing as a naval architect with Vigor,  
20 right, for the 70?

21 A. For the tow-resistance calculations, yes.

22 Q. Okay. But that was it?

23 A. That was it.

24 Q. Okay. So I want you to put your naval architecture hat on.  
25 For however it happened, for the 70 to have sank, there had

1 to be some catastrophic failure, right?

2 A. Yes. For it to sink, there would have had to be extreme  
3 loss of buoyancy or additional load implied on the vessel.

4 Q. Okay. And that was so catastrophic that it caused the  
5 safety deck to be breached, right?

6 A. I couldn't render a guess of when the safety deck or how  
7 the safety deck was breached, sir.

8 Q. Okay. But you know that, for this dock, if the safety deck  
9 is not breached, it floats, right?

10 A. What I know as a dockmaster -- and I have not evaluated as  
11 a naval architect beyond this -- but, yes, in a harbor scenario,  
12 calm waters, if the safety deck was not breached and the dock  
13 was fully submerged, as in the main ballast tanks were flooded,  
14 the safety deck would not go underwater, yes.

15 Q. So when you're talking with Bob and Russ Shrewsbury that  
16 night, everybody is trying to figure out whether the -- what's  
17 going on. You never said to them, "Bob and Russ, I can run all  
18 the calculations. I can't figure out what's going on but, let  
19 me tell you, if the safety deck is breached, you're going down";  
20 never told them that?

21 A. No, I did not tell them that, that I recall.

22 Q. Okay. But you knew that at the time?

23 A. Yeah. I mean, if every compartment in that dock was  
24 flooded, there would be no more buoyancy. Yes, I knew that. I  
25 think anyone would know that.

1 Q. Well, that was the -- the last defense. That last defense  
2 holds, it floats. If that last defense doesn't hold, it sinks.  
3 Right?

4 A. Sir, there are a lot of variables in that. The safety deck  
5 has its own compartments, and so I would have to assume that all  
6 those compartments were flooded as well, or, you know, water was  
7 transferring to another side, or how that -- so I do not -- I  
8 struggle answering that directly.

9 Q. Okay.

10 So you're communicating with Bob and Russ throughout the  
11 evening. You're getting your dinner messed up. Russ was out at  
12 dinner, too. He'll testify to that.

13 A. Okay.

14 Q. Everybody is talking. You get home, and you never ask  
15 them, Has it gotten worse?

16 A. I do not recall asking that question.

17 Q. You never said, Well, hey, you guys, you know, I sent you  
18 this at 9:53 -- and we're talking now it's eleven o'clock and  
19 you're on the phone with Ron Greger and you're talking with Paul  
20 about Global, but you never went back to Western and said, What  
21 are you seeing now?

22 A. The original communication that came across with the  
23 picture, it was described as a hard-to-get scenario -- it was  
24 hard to see -- well, not hard to see -- sorry. Communication  
25 was a little bit difficult, so I was relying on Western to



1 continue to feed information to me. There was a lot of things  
2 going on between, like I said, coordinating with Global and  
3 whomever else I was trying to coordinate with, and get a night's  
4 sleep before flying to wherever.

5 Q. So Chris Law, he is the -- he's some part of the insurance  
6 for the 70, right?

7 A. Yes.

8 Q. Okay. And we talked about some calculations he did that  
9 turned out to be wrong.

10 Did he also do some other calculations that related to wave  
11 and wind?

12 A. I do not recall.

13 Q. Okay.

14 So we have Rich Shaw's draft survey, and then you and Rich  
15 Shaw discussed -- emailed with Chris Law about the draft survey?

16 A. Yes, there were email communications there.

17 Q. Okay. And so Chris Law has the draft survey, and he makes  
18 the recommendation that the wave height and wind be -- wave  
19 height be decreased in the draft report, and wind restriction be  
20 increased, right?

21 A. He made recommendations for changes, yes.

22 Q. And it was those recommendations that Rich Shaw carried  
23 into his final survey report, right?

24 A. You have to line the two documents up for me to verify,  
25 but, yes, that sounds correct.

1 MR. BOYAJIAN: Objection, Your Honor, to this.  
2 Captain Shaw was here. Captain Shaw said that he did a  
3 tremendous amount of work before coming up with his own  
4 conclusions that he put in his report. He did not say that he  
5 got numbers from somebody at an insurance company, and now  
6 Western is trying to use Dan Keen, who is neither Captain Shaw  
7 nor Mr. Law, to try and create a connection between one man's  
8 thinking and another.

9 MR. SIMMS: Okay. Well, we, obviously, don't --

10 THE COURT: Hang on.

11 MR. SIMMS: -- don't agree with what Captain Shaw was  
12 remembering, but Mr. Keen was remembering something else. He  
13 was part of these conversations, shooting these things back and  
14 forth --

15 THE COURT: The objection will be overruled. It's the  
16 witness's testimony that matters, not counsel's comments and  
17 statements.

18 Q. (By Mr. Simms) So at the time -- and before the tow left,  
19 the only thing by way of survey was Rich Shaw's draft survey,  
20 right? Is that right?

21 A. Yeah, sorry. I'd have to look at dates and time stamps to  
22 verify what document was out at the time.

23 Q. Okay.

24 Rich Shaw didn't issue his final survey until the day after  
25 the tow left, right?

1 A. Yes. Rich Shaw and Bowditch would issue a final on  
2 departure.

3 Q. Okay.

4 So in your experience as dockmaster, it's customary that  
5 the surveyor will -- before the tow departs, the trip-and-tow  
6 surveyor -- it's customary that the surveyor will get with the  
7 captain, go over the survey, and have the captain initial the  
8 survey, right?

9 A. I don't have enough experience there to comment to that. I  
10 really don't.

11 Q. Well, you asked Rich Shaw to go down to meet the tow and  
12 tug before they left, did you?

13 A. Rick Shaw makes it a point to inspect the tug before it  
14 left. So that's what he does. I didn't direct him for that.

15 Q. With that, he did inspect the tug.

16 But my question is, you asked Rick Shaw to go down to meet  
17 the tug and tow before they departed, right?

18 A. I don't recall.

19 Q. You said, Are you going down there?

20 A. If I said that, Are you going down there to see it leave,  
21 and that may be when he asked me to take the drafts to the  
22 vessel on departure, because he couldn't attend.

23 Q. Okay. So you took the draft on departure?

24 A. Yes.

25 Q. Okay. That's the draft of the --

1 A. Of the tow.

2 MR. SIMMS: All right. Let me see if my folks have  
3 any questions.

4 All right. We'll turn you back over to the Vigor side.

5 THE WITNESS: Thank you, sir.

6 MR. SIMMS: You're welcome. Thank you.

7 THE COURT: Any other questions, Mr. Boyajian?

8 MR. BOYAJIAN: Yes, Your Honor, certainly more than  
9 ten minutes. I say that because maybe Your Honor wants to take  
10 our break before I get started.

11 THE COURT: No. Let's get started. We take our break  
12 at 10:30.

13 REDIRECT EXAMINATION

14 BY MR. BOYAJIAN:

15 Q. Mr. Keen, I'm going to start with some questions that came  
16 out of Mr. Simms' line of questioning, and then we'll go back to  
17 some that I had ready for you this morning.

18 The List-O-Light system, remind us what that is and where  
19 it gets used.

20 A. Yes. The List-O-Light system was light bar installed on  
21 the end of the dry dock; shone to shore -- lights towards shore  
22 for use during a dry dock operation or when the dock was in  
23 operation as a dry dock. It was an early warning indication  
24 system if there was a wake change on board the dry dock, causing  
25 the dock to list.

1           When a dock is in a lifted condition with a vessel on  
2 board, or a -- what do you call it? -- burden condition, it can  
3 be sensitive to weight change. And you have what is called a  
4 low freeboard at that point so that it would have less than a  
5 foot -- or it's measured in inches -- of distance of pontoon  
6 deck above waterline.

7           If the dock were to list too much to one side, the water  
8 would progress onto the pontoon deck, resulting in a loss of  
9 buoyancy. The pontoon deck of the whole hull has a water plane  
10 -- right? -- so that's when you take a slice of the vessel along  
11 the waterline, and that water plane represents resistance --  
12 buoyant -- sorry. Excuse me.

13           You take that plane, and by a matter of height in the Z  
14 direction, you can define weight -- weight per -- it values a  
15 weight per inch. Anyway, the weight it takes to submerge the  
16 dock.

17           And once the pontoon deck tilts into the water and water  
18 comes across the pontoon deck, that water plane shrinks, and it  
19 takes less weight to cause a change or add to the change to the  
20 dry dock.

21           So anyhow, to summarize it, the List-0-Light is an early  
22 warning system for events like that so that shoreside personnel  
23 could notify a dockmaster in the event that a light was alarmed.

24 Q.       So the List-0-Light, then, is a tool used when you're  
25 lifting ships to help make sure that you don't tip over and drop

1 the ships that you're lifting?

2 A. Correct, or, more importantly, all the personnel working on  
3 the ships. And it is for the duration of the availability while  
4 the ship's lifted. That's the real intent.

5 Q. Okay. This isn't a tool used for towing?

6 A. No.

7 Q. Heger, we keep talking about Heger's analysis for the YFD  
8 69. They approved a one-piece tow of the YFD 69 subject to a  
9 ten-foot-wave-height restriction, right?

10 A. Through the report, yes.

11 Q. So that was their conclusion. The structure of the YFD is  
12 suitable for one-piece ocean towing subject to a  
13 ten-foot-wave-height restriction?

14 A. Yes. I would have to make sure I read the paragraph  
15 correctly, but, yes, that's what I believe it says.

16 Q. And the YFD 69 and the YFD 70, from structural standpoint,  
17 are identical, correct?

18 A. That's correct.

19 Q. The difference is condition?

20 A. Correct.

21 Q. And Richard Shaw was hired as a warranty surveyor to  
22 compare and tell you the present condition of the 69 and the 70  
23 prior to their ocean tows, right?

24 A. That's correct.

25 Q. And what did he conclude?

1 A. He determined that the 70 was acceptable to tow with also  
2 the preparations we'd done to the vessel.

3 Q. And subject to the exact same ten-foot-wave-height  
4 restriction that Heger had concluded?

5 A. Yes.

6 Q. So Richard Shaw and Heger, coming from different angles,  
7 looking at the same dock, both settled on ten-foot-wave-height  
8 restrictions?

9 A. Yes.

10 Q. The YFD 70 was sold for \$10,000. You were here the other  
11 day when Mr. Torrey testified about why the YFD 70 was sold, but  
12 can you remind us? Was Vigor trying to make a profit off it, or  
13 was Vigor trying get it out of the commercial market?

14 A. Vigor was trying to get it out of the commercial market.  
15 We did not want it to be sold and then resold to an interested  
16 party to then compete with us in the market. So, quite frankly,  
17 we would have paid for it to be removed.

18 Q. Rather than it go to a competitor --

19 A. Correct.

20 Q. -- who would try and undercut you and bid for the same  
21 jobs?

22 A. Yes.

23 Q. So the value to Vigor was not making a couple hundred bucks  
24 on selling a dry dock; it was getting it out of the competitive  
25 market?

1 A. That's correct.

2 Q. I'm sorry to put you on the spot for this.

3 Does Vigor hire Western for ocean towing anymore?

4 A. We do not.

5 Q. Why does Vigor still hire Western for moves within the  
6 yard?

7 A. It's something they've done well at, and they have the  
8 equipment in the Puget Sound that no one else has.

9 Q. Okay.

10 I want to talk about tracking hours, how you track person  
11 hours within the yard.

12 For commercial projects, tell us how you track hours.

13 A. For commercial projects, we set up a number tracking  
14 system. For simplicity, we'll call items "tasks." These items  
15 all have individual numbers associated to them, project numbers  
16 or task numbers, and personnel will -- they will charge their  
17 time to those individual tasks numbers as they complete the  
18 work.

19 Q. Okay. Do you do it a different way when you're working on  
20 your own equipment?

21 A. We do. There is a general overhead number that, most of  
22 the time, it gets charged to by individual tasks.

23 Q. And so when Vigor's own shipyard personnel -- who is expert  
24 in welding, pipefitting, et cetera -- when they're assigned to  
25 work on a Vigor asset, they don't track hour-by-hour,



1 bolt-by-bolt what they do because you're not preparing and  
2 sending a bill to someone.

3 A. That's correct.

4 Q. The safety deck, I want to be clear about this.

5 You said that the safety deck, were it not breached, in  
6 calm water in the yard, would keep the dock from sinking,  
7 correct?

8 A. The safety deck, yes, in calm waters.

9 Q. Was the YFD 70 in calm waters when it sank?

10 A. Not that I'm aware of. It did not appear to be.

11 Q. Is there a situation in which the safety deck could be  
12 breached but many other compartments within the dock are not  
13 breached, such that the dock wouldn't sink?

14 A. The safety deck itself being elevated, if there was a  
15 structural issue there and no issues below, would take on water  
16 in swells above 30, 40 feet above waterline. I would have to  
17 look at individual case scenarios to figure out the rest of the  
18 details.

19 Q. What about this: The dry dock -- kind of looks like this,  
20 like a field goalpost -- tips all the way over. One safety deck  
21 is underwater and breached, but this side still has a lot of  
22 compartments that have air in it. It could, theoretically,  
23 float, right?

24 A. That's correct.

25 Q. So it's not just simply the safety will say that -- and if

1 the safety deck floods, if one floods, the dock is gone. It is  
2 far more complicated, the analysis, than that?

3 A. That's correct. These docks were designed to do lots of  
4 weird things. In some cases, they come through the Panama Canal  
5 on one side. They would flood everything on one side,  
6 including, I believe, the safety deck, with weights, and it  
7 would sit upright on its side going go through the Canal. So  
8 they are versatile.

9 Q. Because the Canal is not wide enough to let a 120-wide dry  
10 dock go through?

11 A. Correct.

12 Q. And you're aware that this has been done for dry docks to  
13 get through the Canal?

14 A. I've seen photos, yes.

15 Q. Okay.

16 Who was in charge of the tow once it left your dock?

17 A. Western Towboat.

18 Q. Okay.

19 But you were happy to answer questions for them, to the  
20 extent you could, right?

21 A. Yes.

22 Q. As a dockmaster with a lot of knowledge about how this dry  
23 dock worked.

24 A. That's correct.

25 Q. You can only answer questions if you have relevant,

1     adequate information, right?

2     A.     Yes.   Good data in equals good data out.

3     Q.     You couldn't see the dry dock from dinner with your wife,  
4     could you?

5     A.     I could not.

6     Q.     Couldn't see the dry dock from your house when you were  
7     home packing to get on an airplane, could you?

8     A.     I could not.

9     Q.     Who could see the dry dock?

10    A.     Western Towboat.

11    Q.     And they gave you what updates?

12    A.     Updates from the initial call from Bob.  I assumed the  
13    photograph that was sent to me was relative to the initial phone  
14    call of -- of -- reporting a list, and then the follow-on  
15    port-bow-is-awash email.

16    Q.     So just those two?

17    A.     That I recall, yes.

18    Q.     Okay.

19            Ultrasonic gauging, how is that done?  Because it sounds  
20    like -- it's a quick name, and as my partner, Mr. Jarrett,  
21    pointed out this morning, you say it quick enough it almost  
22    sounds like an oil change.  What is it?

23    A.     Ultrasonic gauging or thickness gauge testing, UT gauging,  
24    all synonymous names, are -- it's a piece of equipment tethered  
25    on with a probe, and you put the probe on a steel -- or in this

1 case, the steel, and it reports back the thickness of the steel  
2 on the screen.

3 And the process of doing that is establishing where you're  
4 going to go with it. Most times, in dry docks, it is what we  
5 call belts. So the length of the dry dock, sir, you take  
6 sections of it, sampling sections of approximately 10 to 15  
7 sections down the length, and you do the full circumference of  
8 it.

9 So on a long dry dock, you turn it by its side, you do  
10 around the entire perimeter and the members in that area. And  
11 you take them several feet apart -- a couple feet apart. So you  
12 take a shot, you record your shot, you move to the next one;  
13 take your shot, record the shot. And you do everything you can,  
14 standing. When you can't reach it from standing, you have a --  
15 you would have to fully scaffold or bring in rope technicians to  
16 suspend themselves in the large, tall tanks.

17 A full-on inclusive process of the dock would take over a  
18 month of sampling, and, likely, another month of report writing.

19 Q. Does Vigor have the equipment and personnel to do a  
20 complete ultrasonic testing of a dock the size of the YFD 70?  
21 Does it have that capability, using its own equipment and staff?

22 A. No. We're not staffed to do a job that big and be able to  
23 maintain our -- we're, actually, not staffed to do a job that  
24 big.

25 Q. Okay.

1 A. It's a large crew.

2 Q. So to do the whole dock, you're saying it would take two  
3 months. But you could certainly do a smaller section, right?

4 A. We could, yes. Vigor has capability of in-house -- doing  
5 smaller sections if called out to.

6 Q. So Richard Shaw went, personally, into each and every tank  
7 and looked at every section of the dock. If he said, "Mr. Keen,  
8 I have concerns about this area, would you perform an ultrasonic  
9 gauging in Tank 12," would Vigor have done that?

10 A. Yes, we would have and could have.

11 Q. Okay.

12 What about if Western had said -- because you said Bob and  
13 Russ took a walk along the dock -- if they said, "We have  
14 concerns about this area here near the waterline, Dan, we'd love  
15 if you'd do you an ultrasonic gauging to put those concerns to  
16 rest," would Vigor have done that ultrasonic testing?

17 A. Yes, we would have.

18 Q. Okay.

19 Was there any indication or request that you got from  
20 Captain Shaw or his assistant, Mike Simonson, that requested  
21 that Vigor do an ultrasonic testing of any specific part of the  
22 YFD 70?

23 A. No, there was not, no request.

24 Q. Did you do an ultrasonic testing of the entire YFD 69  
25 pre-tow?

1 A. No, we did not.

2 Q. Okay.

3 Heger analyzed the YFD 69 for open-ocean tow in one piece.  
4 Did they say, "Before we can do this, when you need to do a  
5 complete ultrasonic testing, or we can't evaluate whether this  
6 can be towed at sea"?

7 A. They did not.

8 Q. How do you take -- physically take -- I know we talked  
9 about what the pieces look like when you take the YFD apart.  
10 How do you physically take the YFD 70 apart?

11 A. It's quite an extensive process.

12 THE WITNESS: I've been using my hands a lot, sir.  
13 Would you like me to draw? Would that help?

14 THE COURT: You can explain it.

15 THE WITNESS: Okay. I just want to make sure you  
16 understand.

17 A. So, for lack of a better description, this would be the end  
18 sections -- right? -- and as we described yesterday, this is the  
19 center body.

20 To perform a separation of the dock itself, there are --  
21 each end section is connected -- bolted by over 200 bolts,  
22 one-inch-plus diameter bolts, approximately 100 on each side of  
23 the dock, in the wing wall.

24 So at that meeting surface, to perform this, you'd have to  
25 ballast the dock into a situation where there was a positive

1 up-force at that faulty connection. Then you loosen your bolts,  
2 and then operate this -- this -- the end sections' equipment --  
3 ballasting equipment, to ballast it down, in a way, and then  
4 perform -- in a seamanship-like manner, perform a separation,  
5 float it away, and store the dock -- this section at a location.  
6 And then you'd have to repeat the process on the other end.

7 To put the sections inside, you would then have to operate  
8 the center as a dock on itself. All equipment operating,  
9 actually, very crucial. There's quite a bit of redundancy in  
10 the system, but once you've separated the ends, you've lost some  
11 redundancy or the pumping capability. Those sections weren't  
12 attached to the center as far as pumping, but they also help  
13 create an up-force.

14 So then the dock would submerge, and you bring the two end  
15 sections in, and then lift up the whole thing.

16 One of the critical things with the separating -- I kind of  
17 glossed over it -- is control of this section. You have to  
18 install electrical umbilicals for control cables and supply  
19 power to these end sections so you could actually operate it  
20 from the control house, because, in the normal configuration,  
21 all that is truncated and omitted, and it's just direct  
22 hardwired. So you disconnect that electrically and then install  
23 long umbilicals to be able to operate this end section of the  
24 dock, to allow it to be flexible so you're not ripping things  
25 apart when you're moving it.

1 Q. How long does that process take?

2 A. The preparation and execution of that, I would estimate,  
3 at, at least, a month to do.

4 Q. Okay.

5 A. And not to mention the bolts -- many of the bolts are in a  
6 very, very tight space on the outboard side. Inboard, along the  
7 pontoon wall, they're right there at your hands.

8 On the outboard, it is an 18-inch-wide gap, and you're down  
9 working your hand in a pocket. It's almost -- probably better  
10 you would have to flush them off, which is take a torch and  
11 actually burn them away and replace the bolts later, if  
12 that's -- you're intending to put it back together.

13 Q. So a tremendous amount of work to do it?

14 A. Correct.

15 Q. It would make sense that if you could get professionals to  
16 tell you it was safe to tow on the open ocean in one piece, that  
17 might be a preferable option, from a commercial standpoint?

18 A. Yes, most definitely.

19 Q. Heger Dry Dock, are they the nation's number one,  
20 preeminent dry dock engineer outfit?

21 A. They are.

22 Q. Okay. And their conclusion was it was safe to tow it in  
23 one piece if you stay out of waves over ten feet?

24 A. Yes.

25 Q. And a warranty surveyor, who also looked at it, safe to tow



1 it in one piece from Seattle to Ensenada if you stay out of  
2 waves over ten feet?

3 A. Yes.

4 Q. Okay.

5 If you put the ends on the middle and lift it for an ocean  
6 tow, isn't that just more weight on fewer buoyant tanks?

7 A. Correct. You're carrying cargo, if you will, at that  
8 point, and you're more susceptible to damage. So a loss of one  
9 tank of buoyancy would be a much more extreme resulted condition  
10 with the two pieces on board than it would have been as a  
11 one-piece tow.

12 Q. So it is a tradeoff. There are pluses and minuses, from a  
13 safety standpoint, for towing in a one-piece configuration or a  
14 stacked configuration?

15 A. For deemed stability compartmentalization, yes.

16 Q. You told us yesterday you could have, with the assets  
17 available in the Vigor's commercial shipyard, you could have  
18 done this work. At the Mexican shipyard, could they have  
19 unstacked it?

20 A. Likely not. They did not have the appropriate -- or they  
21 expressed concern of the appropriate deep water; would have had  
22 to take the dock and the three pieces out to deeper water, and  
23 then perform this exercise away from -- away from service and  
24 support and needed power generation, experts at operating it.  
25 They were not experts or operators of a dry dock, so they would

1 have had to figure out how to do that as well.

2 Q. Okay. Sounds like part of what you're saying is at their  
3 dock.

4 At your dock, you had enough water depth, equipment, and  
5 power to do --

6 A. Correct.

7 Q. -- this operation, and expertise to do this operation.

8 At their dock, they had none of those. So they would have  
9 had to do this at a remote location, out in the middle of the  
10 harbor, putting generators and pumps on a barge, and all of this  
11 would be done in a floating, dynamic situation in the middle of  
12 the Ensenada harbor.

13 A. Yes, that's how I understand it, yes.

14 Q. And only if they could hire someone with your expertise to  
15 coordinate this ballet.

16 A. Yes. I would have likely had to go down to execute it.

17 Q. So they didn't want it in the stacked configuration, then.

18 A. No.

19 MR. BOYAJIAN: Ms. Ivie, can I have 34, Western's?

20 This email from Dan Keen, down at the bottom, please.

21 Q. (By Mr. Boyajian) We keep talking about this. What did  
22 you tell Western could happen. Okay. Let's take this apart.

23 First part: This is worst case, all tanks flooded one  
24 side.

25 Were you saying that this is the worst conceivable thing

1 that could happen to the dry dock, or, you, Western, have told  
2 me it's listing slightly to port. This is a model if everything  
3 on the port side floods?

4 A. The latter. This is a worst case if all tanks on one side  
5 of the dry dock were flooded.

6 Q. Okay.

7 And then do you say, "It's definitely going to stop here"?

8 A. No. I'm saying, "It is possible for it to stop here if" --  
9 or "here" -- I have some words missing there -- "calms down,"  
10 the intent of that is, "here, if the weather calms down."

11 Q. So what you meant is, It's sinking, I don't have a lot of  
12 information from you, Western. I have been unable to recreate  
13 you told me what you have -- I'm putting together testimony  
14 you've given -- but if I flood everything on the port side, it  
15 might stop here if the weather suddenly improves.

16 A. Yes, that's what I'm trying to say.

17 Q. Okay. You didn't tell them this thing isn't going to sink?

18 A. Not here, no, no.

19 Q. This GHS model -- actually, can we scroll down, please, to  
20 the next page?

21 What angle is that in your model?

22 A. You know, to be exact -- if I could read the header there,  
23 it would tell us. If you can zoom in -- if the scan is proper.  
24 It may be hard to read.

25 Q. Okay. Let me ask you a different question.

1           In preparing for trial, we were working with you, thinking  
2   about creating some demonstrative exhibits, and we took Captain  
3   McGavock's sworn statement, to the United States Coast Guard,  
4   that he observed a 40-degree list at 10:30 at night. And I said  
5   to you -- well, frankly, I said, "Dan, could you show me what a  
6   40-degree list looks like?" And you plugged it into GHS. What  
7   happened?

8   A.   Just to correct, it wasn't GHS I plugged it in to.

9   Q.   Oh, I'm sorry. What model and program did you use?

10   A.   Using HECSALV, which is a competitor to GHS. Years later,  
11   Vigor upgraded to a different software. Sorry.

12   Q.   Sorry.

13   A.   I'm slowing down. I apologize.

14   Q.   I asked you to plug in 40 degrees into the modeling  
15   software that Vigor uses for dry docks now. What did the  
16   modeling program tell you?

17   A.   At 40 degrees, I could not recreate a stable floating  
18   condition.

19   Q.   You're an engineer. Let me see if I can put it into plain  
20   language.

21           The program kept spitting out that the dry dock was sunk?

22   A.   That's correct. And it kept showing me that the dry dock  
23   was capsizing itself at 40 degrees.

24   Q.   Do you remember, what was the absolute most angle that you  
25   could get your program to say the dry dock might still float?

1 A. Approximately 30 degrees.

2 MR. SIMMS: Your Honor, we've got to object. They're  
3 now offering him as an expert. This is not what he was offered  
4 for. He was offered as a fact witness. What he's referring to  
5 is calculations he did after the fact with a completely  
6 different program; never cross-examined him on this; never  
7 disclosed before. So the court shouldn't allow the expert  
8 testimony.

9 THE COURT: Response?

10 MR. BOYAJIAN: No response, Your Honor.

11 THE COURT: All right. Objection sustained.

12 Counsel, let's take our break.

13 MR. BOYAJIAN: I have one more.

14 THE COURT: Oh, that's even better.

15 Q. (By Mr. Boyajian) Had Western Towboat told you, Dan Keen,  
16 it's 10:30 at night. We're about to go into the marine  
17 sanctuary. Captain McGavock is visually observing a 40-degree  
18 list, and the Coast Guard observed the same from a helicopter a  
19 half an hour ago. What would you have told Western?

20 A. That it will sink. You better get yourself and crew  
21 members safe.

22 MR. BOYAJIAN: Okay. Thanks very much.

23 THE COURT: Mr. Keen, I have one question.

24 THE WITNESS: Yes, sir?

25 THE COURT: You explained about the -- let me ask it

1 this way:

2 From your perspective, with your expertise, your  
3 experience, your knowledge as a naval architect, what is your  
4 understanding of the reason for the ten-foot-wave-height  
5 restriction for towing this dry dock?

6 THE WITNESS: My understanding is to reduce  
7 longitudinal bending moment for strength of the dry dock.

8 THE COURT: Can you explain that a little better?

9 THE WITNESS: As a dry dock -- or sorry -- as vessel  
10 goes through a wave set, and you go into hogging and sagging  
11 conditions because of the waves induced on the vessel, then, in  
12 extreme conditions, large wave sets are -- the higher the waves.  
13 The more the vessel could sag or hog in that. So that strength  
14 there is why, I understand, the wave conditions were set to what  
15 they were.

16 I'm sorry. Did that -- I might have gone backwards there  
17 with you a little bit.

18 THE COURT: No, no. It makes sense.

19 So it doesn't have anything to do with, potentially, water  
20 getting on top of the pontoon deck and adding more weight?

21 THE WITNESS: No. The pontoon deck, sir -- or the  
22 vessel itself was trimmed by the stern, and the pontoon is a  
23 flat, clear surface, so the water would have run off the back if  
24 we had got green water on deck. And with the tank lids all  
25 secured, water would not have entered the -- you know, through

1     that as well.  So...

2                 THE COURT:  And just out of sheer curiosity, and I  
3     understand it's probably not relevant at all to the  
4     determination the court has to make, but you indicated,  
5     previously, that you had suspicions as to what may have  
6     happened.  What do you suspect happened?

7                 THE WITNESS:  Sir, I -- initially, with the small list  
8     that we were seeing, my first thought was we hit something -- or  
9     something has hit it -- sorry.  So that's why I was performing a  
10    hunt-and-peck for -- a single tank damaged, would I see the same  
11    conditions that they were seeing?  That's how I started my  
12    evaluation, trying to find -- and as I continued to evaluate, I  
13    could not make that happen without crossing physical boundaries.

14                So one of the unique things about the end section, it being  
15    separate, it's not physically connected to the main section.  So  
16    if you were to flood the entirety of an end section, it's not  
17    possible for that water to transfer in at the levels we're  
18    working with.  I mean, if you flood the entire end section,  
19    we're not putting wings underwater or anything of that sort.

20                So as my round-robin of case evaluations were going, and  
21    unsuccessfully matching what I'm seeing, I started being  
22    concerned that it must have been broken apart from the heavy  
23    weather they were seeing, so it induced longitudinal bending  
24    from the heavy weather they had seen just days prior.

25                THE COURT:  Mr. Simms, any questions from the

1 plaintiff based on the court's questions?

2 MR. SIMMS: Yes, to follow-on to the court's  
3 questions, starting back with what the court wrote.

4 REDIRECT/RECROSS EXAMINATION

5 BY MR. SIMMS:

6 Q. Have you seen the opinion that the court issued last  
7 Monday?

8 A. No.

9 Q. Okay.

10 There's a statement in here: "Keen recalls, after  
11 completing the calculations, he did not believe there was more  
12 than a 50 percent chance that the tow would sink." Is that  
13 correct?

14 A. From the datapoint that I was seeing, I did not -- I was  
15 not thinking that it was going to sink. But from the data --  
16 you know, the initial datapoint, which was a photograph, sir,  
17 and that we have a slight list, as you saw there, that there was  
18 some time of quite a bit of evaluation going on.

19 Q. And the court asked about the ten-foot restriction, and  
20 that was the same for the 69 and for the 70, right?

21 A. I believe, yes, we've already discussed --

22 Q. And so but the 69 was in much better shape than the 70?

23 A. That is not really quality terms, but, yes, it was in good  
24 condition, the 69 was.

25 Q. But you were confident enough that the 69 was in such good



1 condition that you never ran an ultrasound on the 69, right?

2 MR. BOYAJIAN: Your Honor, objection, if I may?

3 THE COURT: Yes.

4 MR. BOYAJIAN: You asked whether Mr. Simms had any  
5 questions that came out of the questions the court had just  
6 asked.

7 THE COURT: Right, and that's going far afield.

8 Objection sustained. Anything else?

9 Q. (By Mr. Simms) And so you never raised any question that  
10 the ten-foot restriction was the same for the 69 and 70?

11 MR. BOYAJIAN: Your Honor, I believe you just  
12 sustained my objection, and he's asking the same question.

13 THE COURT: Any other questions, Mr. Simms?

14 MR. SIMMS: Okay.

15 Q. (By Mr. Simms) How much does it cost to do an ultrasound  
16 survey?

17 MR. BOYAJIAN: Your Honor, again --

18 THE COURT: And, again, Mr. Simms, I didn't mean to  
19 open it up all over again.

20 MR. SIMMS: All right. Okay. So it would just  
21 following be up on Your Honor's questions?

22 THE COURT: Yes.

23 MR. SIMMS: No more questions.

24 THE COURT: Anything further, Mr. Boyajian?

25 MR. BOYAJIAN: No, Your Honor.

1 THE COURT: Mr. Keen, you'll be sad to know you may  
2 step down.

3 Counsel, we'll go ahead and take our recess.

4 (Court in recess 10:37 a.m. to 10:59 a.m.)

5 THE COURT: Counsel, you may call your next witness.

6 MR. SIMMS: We will call Kyle Jacobson.

7 MR. GASPICH: Your Honor, Mr. Jacobson will be wearing  
8 his mask until you direct him otherwise.

9 THE COURT: Yes. Please step forward and raise your  
10 right hand to be sworn.

11 KYLE JACOBSON,  
12 having been first duly sworn, testified as follows:

13 THE COURT: The directive by the governor is that  
14 people can remove their masks in indoor setting. If you're not  
15 comfortable doing that, you can keep it on.

16 THE WITNESS: I'm not vaccinated.

17 THE COURT: Then I will ask you to keep your mask on,  
18 but get closer to the microphone, and pay attention to the  
19 questions that are being asked. Try to answer only that exact  
20 question. If you don't understand something, say so, and we'll  
21 try to get them to clarify it.

22 THE CLERK: Please state your full name for the  
23 record, and spell it for the court reporter.

24 THE WITNESS: Kyle Jacobson, K-y-l-e, J-a-c-o-b-s-o-n.

25 THE COURT: You may inquire.

1 MR. GASPICH: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. GASPICH:

4 Q. Mr. Jacobson, were you the second mate aboard the tug *Ocean*  
5 *Ranger* during the trip in which you towed the dry dock the YFD  
6 70?

7 A. Yes.

8 Q. All right. Do you hold a maritime license?

9 A. Yes.

10 Q. And what license do you hold?

11 A. I hold a 1,600-ton Master, with a Master of Towing  
12 endorsement.

13 Q. How long have you worked in the maritime industry?

14 A. Sixteen years.

15 Q. And with whom are you currently employed?

16 A. TradeWinds Towing.

17 Q. You no longer work for Western?

18 A. No.

19 Q. In very brief fashion, give us an idea of your experience.

20 A. I started towing in 2004, and then 2006, I was employed by  
21 Western Towboat, and I left in 2018, and then worked for two  
22 other companies after that.

23 Q. In what capacities have you sailed aboard tugboats?

24 A. OS deckhand, AB deckhand, and mate; typically, chief mate,  
25 the senior mate.

1 Q. During that trip with the YFD 70, what watch were you  
2 assigned?

3 A. I was on the 11:00 to 2:00.

4 Q. Was it a four-hour watch?

5 A. Yes.

6 Q. So it would be 11:00 to 3:00?

7 A. Yeah. Yeah. Sorry.

8 Q. And also 11:00 a.m. to 3:00 p.m., and then again from 11:00  
9 to 3:00 a.m.; is that right?

10 A. Yes.

11 Q. In general, what was your responsibilities as second mate  
12 on the *Ocean Ranger*?

13 A. Responsibilities as a second mate is to stand a  
14 navigational watch and perform safety drills and inspections  
15 when needed for regulatory, and to manage the crew that's on  
16 watch with me.

17 Q. All right.

18 When you're standing watch, your navigation watch in the  
19 wheelhouse on the *Ocean Ranger*, do you monitor the weather?

20 A. Yes.

21 Q. And how do you do that?

22 A. Monitoring the weather would be making my log entries,  
23 observing the current weather that we have, and then also  
24 reading the forecasts that we receive.

25 Q. All right. And do you receive those forecasts, or are they

1 received during a different watch?

2 A. They're typically received during the chief mate's watch.

3 Q. And on this particular trip, who was the chief mate?

4 A. John Cowgill.

5 Q. In order for you to read weather information that  
6 Mr. Cowgill obtained on a different watch he would have, what  
7 would he do?

8 A. Can you please repeat the question?

9 Q. Sure.

10 If Mr. Cowgill is the person who received the weather  
11 information, and he worked a different watch, how did you read  
12 it? In other words, did he save it, did he record it somewhere,  
13 did he leave it out on the counter for you to read?

14 A. Yes. Typically, our forecasts would either be on the chart  
15 table, or we would have the local forecasts on the computer.

16 Q. Okay.

17 And what were the sources of weather that you used during  
18 your watch?

19 A. NOAA forecasts, along with the weather pictures that we  
20 would download.

21 Q. Now, were you -- I'm going to skip ahead and put you during  
22 the voyage from Seattle to Ensenada.

23 Were you on watch when the tug rounded Cape Flattery?

24 A. No.

25 Q. Where in relation to Flattery did your watch fall?

1 A. I don't remember specifically, but I think I was before we  
2 rounded Flattery.

3 Q. During the trip, did you -- you know at the end of the trip  
4 that this resulted in the sinking of the dry dock, but prior to  
5 that time, did you have any problems towing the dry dock?

6 A. You mean prior to the capsizing?

7 Q. Prior to the time where -- putting aside that incident,  
8 where you started having problems that led to the capsizing and  
9 eventual sinking, but, prior to that time, was there any  
10 problems, during your watches, that you observed, with towing  
11 the dry dock?

12 A. Other than being a really slow tow, no. It was towing just  
13 like anything else that I've towed in my career.

14 Q. Okay.

15 So in your 16 years in the towboat industry, have you  
16 experienced tows that have had issues?

17 A. Yes, and -- but typically it would be because it's slowing  
18 you down too much or something, but nothing out of the ordinary,  
19 I guess you'd say.

20 Q. Okay.

21 So if you have a problem with a tow, what are the types of  
22 things you might see?

23 A. You can lengthen your tow. You can shorten your tow.  
24 There's all -- you can put surge gear, in which is extra chain.  
25 So there's different ways that we can try to make the tow work

1 better, but a lot of the times, at the end of the day, you've  
2 got to just go with the way it's going.

3 Q. Okay. And that wasn't my question, but it will probably do  
4 because I didn't ask it properly.

5 A. Oh, sorry.

6 Q. So let me try again.

7 Some of the problems you might see with a tow that you're  
8 towing, either a barge or anything else, could you encounter a  
9 list with the tow?

10 A. I've never seen that in my career, but, yes, you can  
11 encounter that, I guess.

12 Q. Okay.

13 And have you ever experienced, in your career, where the  
14 tow may not track directly behind you but now swing off to the  
15 side?

16 A. Yes.

17 Q. Or go back and forth?

18 A. Yes.

19 Q. All right.

20 And with respect to the 70, did you ever see that -- prior  
21 to the events that we're going to be talking about in a moment  
22 that led to the capsizing -- but prior to that time, did you  
23 ever notice any problem with listing?

24 A. No.

25 Q. Did you ever notice any problems with the tow not tracking

1 properly behind the tug?

2 A. No. I remember it tracking quite well, actually.

3 Q. Okay.

4 And when did you first notice that change?

5 A. I don't remember the exact dates, but it was probably about  
6 12 hours before the capsized was when I noticed the list.

7 Q. Okay.

8 Now, what do you do during your watch to check the  
9 condition of the tow?

10 A. It's visual inspection, so you're constantly looking behind  
11 you at the tow while you're on watch.

12 Q. And you said part of your -- one of your watches falls from  
13 11:00 p.m. to 3:00 in the morning. So when it's dark, can you  
14 see the tow?

15 A. You can see the navigation lights, and you can put a  
16 spotlight on it, too, to do a visual check.

17 Q. Do you use the radar to check on the tow?

18 A. Yes.

19 Q. And what will the radar show you?

20 A. The radar shows you -- do you need me to, basically, dumb  
21 it down for someone that doesn't know what a radar is?

22 MR. GASPICH: Well, I'm not sure how to answer that  
23 respectfully, Your Honor.

24 THE COURT: I know how a radar works.

25 THE WITNESS: Okay.



1 MR. GASPICH: Thank you, Your Honor.

2 A. It's, basically, painting a picture, where you can just see  
3 either land or different objects around you. So, yes, you're  
4 seeing the echo on the screen.

5 Q. (By Mr. Gaspich) And if you turn the range down  
6 sufficiently, would you be able to see the outline of the dry  
7 dock on radar?

8 A. Yes.

9 Q. Okay. And did you do that for this voyage when checking  
10 it?

11 A. Yes.

12 Q. Okay.

13 Now, let's move ahead to the event you talked about; that  
14 there was a list approximately 12 hours before the sinking.

15 So were you on watch?

16 A. Which time again?

17 Q. We're going to talk about the event, the capsizing and  
18 sinking.

19 A. Okay.

20 Q. You said earlier that you first noticed something about 12  
21 hours before. What did you notice?

22 A. It was hard to tell because there was a northwest swell on  
23 the quarter of it, so it was pitching in a way that it was kind  
24 of hard to tell if it was taking a list. But John and I  
25 monitored it and confirmed, after watching it for, I believe it

1 was an hour and a half, maybe two hours, that it was definitely  
2 taking a list.

3 Q. And John is who?

4 A. The chief mate.

5 Q. All right.

6 And who was on watch when this was first noticed?

7 A. We were doing watch-change, so I believe I was coming off  
8 and he was going on watch.

9 Q. All right. And so the watch-change would have happened  
10 somewhere prior to 1500, or 3:00 p.m.?

11 A. Yes.

12 Q. Who first noticed it? Was it you or Mr. Cowgill?

13 A. John was the first that mentioned it, because he said he  
14 looked out the back when he was making his coffee.

15 Q. And then what did you do when he first brought it up?

16 A. We both looked at it and monitored it, and then determined  
17 that, yes, it was taking a list.

18 Q. Okay.

19 Now, you mentioned something about a northwest swell, so I  
20 want to have you explain to the court what you were talking  
21 about.

22 So what direction -- or if you don't remember  
23 specifically -- what general direction were you towing at that  
24 time?

25 A. We were towing in a south-southeast direction, or it was

1 more southerly. So it was -- the northwest swell, the swell  
2 coming out of the northwest, was pushing the stern quarter of  
3 the tow.

4 Q. So if I could use my hands to point south, or down, as a  
5 compass here, you're heading this way, and the swell was coming  
6 from this way, this direction?

7 A. Yes.

8 Q. Actually, I have to turn around for you. So like that.

9 Okay. And why did the swell make it difficult to discern  
10 whether you had a list?

11 A. Because, typically, a tow that doesn't have much draft,  
12 which, I believe, it was only drawing three, maybe four feet,  
13 pitches and rolls quite excessively. So it was making it pitch  
14 in a way that it was hard to determine if it was taking a list.  
15 If it was on a flat surface, you'd notice the list right away.

16 Q. How long did you look at it before you came to the  
17 conclusion that the dry dock was developing a list?

18 A. I believe it was, like, an hour, an hour and a half.

19 Q. Okay. And then what did you do?

20 A. Notified the master.

21 Q. All right. And what happen then?

22 A. I was off watch at that time, so I -- I can't recall what  
23 happened at that time.

24 Q. Okay.

25 Do you know any decisions about changing the course of the

1 tow? Instead of heading for Ensenada, do you know if they  
2 headed somewhere else?

3 A. When I came back up -- I believe I was on my off-watch for  
4 dinner -- I heard that we were heading to San Francisco, and  
5 then I went back to bed after that.

6 Q. Okay.

7 And when would be the next time that you were on watch?  
8 Would that have been 11:00 p.m.?

9 A. Yes.

10 Q. All right.

11 Did you participate in any of the conversations that the  
12 captain may have had with Western Towboat or with anyone else  
13 about what to do with the dry dock?

14 A. No.

15 Q. Were you involved in any of that decision-making?

16 A. No.

17 Q. All right.

18 So your watch was 11:00 p.m. There's been testimony in the  
19 case about a meeting or a safety meeting around that time. Do  
20 you recall that?

21 A. Yes.

22 Q. Okay.

23 So tell the court what happened at that time.

24 A. So I was coming up to start my watch, and Stephen, the  
25 captain, had everyone in the wheelhouse, and, basically, laid

1 out what we were going to do in case it decided to sink.

2 Because we were trying to manage our hours; to make sure that  
3 people don't go over their hours, and then also so that you're  
4 not up all day long. So people were trying to get their rest  
5 periods, but we wanted everyone to be on the same page before  
6 people laid down.

7 Q. And what other things were discussed at the meeting?

8 A. We set the tow winch up; said it was ready to release. We  
9 closed all the hatches -- made sure that the boat was ready in  
10 case it did go down -- so that it was watertight. And we were  
11 told to monitor the radar and to monitor the tow, and if it does  
12 go down, to hit the general alarm and wake everybody up so we  
13 could respond.

14 Q. When Captain McGavock held this safety meeting at eleven  
15 o'clock with the crew, did he mention to you about the condition  
16 of the tow?

17 MR. JARRETT: Your Honor, objection; relevance.

18 THE COURT: Overruled. You may answer.

19 A. Can you please repeat the question?

20 Q. (By Mr. Gaspich) Sure.

21 When you had this safety meeting about the preparations,  
22 for the possibility that the tow could sink, did Captain  
23 McGavock also give any information about the condition of the  
24 tow, about the degree of list, or whatever the condition was?

25 A. No.

1 Q. All right.

2 Did you start your watch after the meeting?

3 A. Yes.

4 Q. And when you started your watch -- actually, strike the  
5 question. Let me start over.

6 Did Captain McGavock stand the navigation watch immediately  
7 preceding yours?

8 A. Yes.

9 Q. So he would have been up there from 1900 till 2300, so 7:00  
10 to 11:00; is that right?

11 A. Yeah.

12 Q. And when you took over the navigation watch, did Captain  
13 McGavock stay in the wheelhouse?

14 A. He stayed up long enough to do the watch-change, and then  
15 he went to bed. So I believe it was, like, ten minutes after  
16 11:00 or so that he was out of the wheelhouse.

17 Q. Okay.

18 Did Captain McGavock wind up staying up there for an hour  
19 or more?

20 A. No.

21 Q. Did Captain McGavock, when he did the watch-change with  
22 you, and you took over, did he discuss with you the condition of  
23 the tow?

24 A. He could not discuss the condition of the tow because the  
25 visibility, at the time, you could not see the condition of the

1 tow.

2 Q. And why is that?

3 A. Because you can't see it. When we did the watch-change,  
4 the fog was so great that we couldn't even see the bow of the  
5 tug, let alone the tow, the dry dock. So I was told to monitor  
6 it with radar and to wake him up when visibility becomes clear  
7 enough that we could see it.

8 Q. Okay.

9 Did Captain McGavock ever say to you, You have to be  
10 careful because the condition of the tow is so listed over, I'm  
11 really concerned about it?

12 A. No.

13 Q. Did Captain McGavock ever tell you that the tow had a  
14 30-degree list?

15 A. No.

16 Q. Did Captain McGavock ever give you any information that  
17 suggested that the dry dock was dramatically different from  
18 earlier in the day when you saw it?

19 A. No.

20 Q. If the condition of the dry dock, with respect to its list,  
21 had changed dramatically, would that have been information you  
22 wanted to know?

23 A. Yes.

24 Q. Would you have expected Captain McGavock to tell you if it  
25 had changed in that way?

1 A. Yes.

2 MR. JARRETT: Objection, Your Honor; foundation.

3 THE COURT: The objection is sustained. Ask another  
4 question.

5 Q. (By Mr. Gaspich) During the watch, from when you came on  
6 at 2300, did you have problems towing the dry dock?

7 A. Could you please repeat your question?

8 Q. Sure.

9 Did you notice any problems -- when you came up for your  
10 11:00 p.m. watch and you were up there, did you notice any  
11 problems towing the dry dock?

12 A. Yes. We could not make the speed that we were making first  
13 duly in the trip. We were going slower, and it was becoming  
14 more difficult to steer.

15 Q. When you say it was more difficult to steer, what do you  
16 mean?

17 MR. JARRETT: Your Honor, I have to object again on  
18 relevance, based on the court's comments yesterday, Your Honor.

19 THE COURT: I guess I'm not sure where we're going  
20 with this, counsel.

21 MR. GASPICH: Your Honor, there is a claim for  
22 negligence against Western Towboat and its handling of this  
23 trip, on numerous grounds, and this is leading up to their  
24 actions leading up to the capsizing of this, so it's relevant to  
25 those issues, how they acted -- the crew acted.



1 MR. JARRETT: Your Honor, I understood from the court  
2 yesterday that this issue of negligence has been decided  
3 already, and reconsidered on reconsideration and decided again.  
4 That's the basis for my objection.

5 MR. GASPICH: There's a claim remaining in the case,  
6 notwithstanding the court's earlier ruling, about that Western  
7 Towboat did not exercise proper seamanship in handling of the  
8 tow, on a number of grounds. So we've been talking about  
9 weather, we've been talking about decision-making. This all  
10 goes to that, Your Honor.

11 THE COURT: All right. If I could have you get to the  
12 crux of the matter, I guess. So objection overruled.

13 MR. GASPICH: Yes, yes, Your Honor.

14 Q. (By Mr. Gaspich) You said that the tug had some issues,  
15 you sensed with -- I forget exactly what it was. I'm sorry. I  
16 got distracted with the discussion.

17 Can you tell us what problems you were experiencing with  
18 the tow?

19 A. We were experiencing problems holding our course due to  
20 what we found out later was the extreme list. So we could not  
21 control our direction, and we could not control our speed. It  
22 was -- it was hard to maintain that.

23 Q. Okay.

24 And you said earlier that you couldn't see the tow. How  
25 could you tell that?

1 A. At the time, it was with radar.

2 Q. Now, at some point during your watch, were you able to see  
3 tow?

4 A. Yes, right before it capsized.

5 Q. All right.

6 And what happened? Did the fog lift?

7 A. The fog was still there, but it lifted enough that we could  
8 see the tow. And I put the spotlight on it, looked with the  
9 binoculars, and confirmed it had an extreme list, and woke up  
10 Stephen, and he came up, and that's when it capsized.

11 Q. When you said it had "an extreme list," can you provide us  
12 with a little better description of what you saw?

13 A. Probably a 40-degree list, maybe more.

14 Q. There's talk about the deck. You have two sides and a main  
15 deck of it. Was any parts of the deck of the dry dock, at that  
16 time, around two o'clock, when you first were able to see it,  
17 was any part of the deck below the water?

18 A. The port wing wall was listed over, and half of the main  
19 deck was underwater.

20 Q. Now, prior to that time at two o'clock, when you first  
21 noticed that extreme condition, did you have any concerns about  
22 the dry dock capsizing?

23 A. Could you please repeat?

24 Q. Sure.

25 So prior to the time at 2:00 a.m., where you saw it was

1 severely listed over, but prior to that, did you have any  
2 concerns about it capsizing?

3 A. I had concerns about the tow through my whole watch because  
4 I couldn't confirm any -- because I couldn't confirm its  
5 condition.

6 Q. Did you -- prior to that time, did you have any -- did you  
7 know for certain that it would capsize?

8 A. No.

9 Q. When you saw the dry dock turned over or listed over in the  
10 severe condition, what did you do?

11 A. I woke up Stephen. I called the master.

12 Q. Okay. And then what happened?

13 A. We had the spotlight on it. We were watching it. Stephen  
14 was looking at it with the binoculars, and he told me that it's  
15 starting to capsize and to sound the general alarm to get the  
16 crew up.

17 Q. And was the tow let go at that time?

18 A. Just shortly after, yes.

19 Q. All right. What happened then?

20 A. We released the tow. It was upside down after the capsize,  
21 and we stood by until it was fully sunk.

22 Q. And did you -- after it was released, do you recall how  
23 long a period you stood by?

24 A. I believe it was maybe just under an hour, like 50 minutes  
25 or so.

1 Q. Okay.

2 Now, Mr. Jacobson, did you take photos of the tow when you  
3 were on board the vessel?

4 A. Yes.

5 Q. All right. We're going to pull up some photos for you and  
6 have you identify them.

7 So you took photos of the dry dock during the trip, right?

8 A. Yes.

9 Q. And did you take photos at various times?

10 A. Yes.

11 MR. GASPICH: Your Honor, we'll show the witness  
12 Exhibit 44.

13 Q. (By Mr. Gaspich) And what I'd like to do is I'd like to go  
14 through the photos and have you identify them.

15 A. Okay.

16 Q. The first photo, where was this taken?

17 A. This was shortly after we got underway in Elliott Bay.

18 Q. And this photo here, is that at sea?

19 You took this photo also?

20 A. Yes.

21 Q. And what does this photo show?

22 A. This is when we confirmed that it was taking on a list.

23 Q. All right. So this would have been in that period  
24 approximately 12 hours before it sank?

25 A. Yes.

1 Q. All right. And does this accurately depict what you  
2 initially saw?

3 A. Yes.

4 Q. And in the picture, if you could describe for us -- it  
5 looks like the port bow -- the port bow, that would be on the  
6 right side of the dry dock, the way we're looking at it here?

7 A. So the port bow on, yeah, the right side of the picture.

8 Q. You have a device there. If you could put a dot there  
9 where the port bow is.

10 A. It's about -- yeah.

11 Q. And in this photo, because it's a still, it appears that  
12 the port bow is down into the water. So can you explain that?  
13 Was the port bow submerged at the time, or why does it appear to  
14 show that?

15 MR. JARRETT: Objection, Your Honor. Counsel's read  
16 of what the photo show is not the witness's reading of it,  
17 necessarily. So it's a leading question.

18 Q. (By Mr. Gaspich) Could you explain why the photo looks the  
19 way it does?

20 A. The photo looks the way it does because we are out in the  
21 ocean, and it's between the swells. You also have the northwest  
22 swell, which is coming from this direction, and it's pushing the  
23 stern quarter there.

24 Q. Okay. Thank you.

25 This photo here, when was this taken? What does it show?

1 A. The same time, and it's just a different portion of the  
2 swell. So you can still see the main deck right there.

3 Q. Uh-huh. Okay.

4 And the next picture, what does that show?

5 A. Pretty much the same thing. These were all taken  
6 consecutively, within, probably, a couple seconds of each other.

7 Q. Okay. This is No. 5 of 20. What does this photo show?

8 A. This portion right here is the starboard wing wall, and  
9 then this is the main deck, and then the port wing wall is  
10 underwater down here.

11 Q. So this is after it capsized?

12 A. This is as it's capsizing.

13 Q. As it's capsizing?

14 A. Yeah.

15 Q. All right.

16 And there is a light around the darkness. Where was the  
17 light from?

18 A. Oh, the light? This was the spotlight from the tug that  
19 was shining on it, because it was so dark that you couldn't even  
20 see it without the light on.

21 Q. This is 6 of 20. When was this taken and what does this  
22 show?

23 A. I don't believe I took this one. I haven't seen this one.

24 Q. Okay. Next photo, this picture, 7 of 20.

25 A. Yeah, I don't believe I took this one, either.

1 Q. Okay. Number 8 of 20, it looks like it might be a copy.  
2 I'm not sure.

3 A. Yeah. These are a lot better quality than the ones I took,  
4 so these are not ones that I took.

5 Q. Okay. Did you take this photo?

6 A. No.

7 Q. Just to come back to that photo. On these that you didn't  
8 take, can you tell us when, during this process, between that  
9 12-hour period when they were taken, what they show?

10 A. Looking at that compared to the pictures that I was taking,  
11 it was probably from one of my other crew members that were  
12 taking pictures at the same time as me.

13 Q. Right. But can you tell whether they were taken --  
14 obviously, it is not dark, so it is not after sunset --

15 A. Yeah.

16 Q. -- but you tell when it was taken?

17 A. I can't tell you what time of day it was.

18 Q. And this photo? This is No. 11 of 20.

19 A. That's right before it capsized. So the very top of the  
20 port wing wall is where that red light is, and then the portion  
21 of the dry dock, right there, is underwater.

22 Q. And does this photo accurately reflect what you saw when  
23 the fog lifted around 2:00 a.m.?

24 A. Yes.

25 Q. Okay. Next photo.

1 And for the record, that was 11 of 20.

2 Photo 12 of 20, what does that show?

3 A. That would be the underside of the dry dock after it  
4 capsized.

5 Q. And what does 13 show?

6 A. I believe this was after it capsized, when it was starting  
7 to sink. I can't tell which side that is.

8 Q. Okay. And the next photo?

9 A. Same as the last. This is the underside right here, and I  
10 don't know if this is the port or the starboard wing wall.

11 Q. Okay. So one of the wing walls, at that time, had  
12 completely submerged --

13 A. Yes.

14 Q. -- from the surface?

15 A. Yes.

16 Q. And then 15, is that your picture, or someone else's?

17 A. That looks like one of the ones I took.

18 Q. And 17, anything new in this one?

19 A. No.

20 Q. Eighteen, what is this picture?

21 A. That was one of the pictures I took. It was hard to get a  
22 good picture, but that's, basically, when the fog broke and we  
23 could see the list that it took on.

24 Q. Okay. So I see two white dots. What do those signify, if  
25 you know?



1 A. That's the light reflecting on dry dock. Are you talking  
2 about here?

3 Q. Yes, that and on the other side.

4 A. Yeah. That's the light reflecting on paint on the dry  
5 dock.

6 Q. And 19?

7 A. That was as it was sinking.

8 Q. And 20?

9 A. As it was sinking. You can see, right here -- so when it  
10 sunk, it pitched up and then rolled down, and that right there  
11 is where a hole burst in the deck, and water was pouring out.

12 MR. GASPICH: Your Honor, I'm done with my examination  
13 with one exception, and just a point of clarity.

14 Your Honor said yesterday that, given the prior rulings of  
15 the court, that the court was not willing to hear testimony  
16 about the location of the tug and the knowledge of the mates'.  
17 The ruling had to do with their knowledge, the situation.

18 This witness has testimony. I would make a proffer that he  
19 would testify similar to the captain; that from the point that  
20 he was on watch, he was monitoring the vessel's position using  
21 the navigational equipment, and that they were outside of the --  
22 he was aware of the boundaries to the marine sanctuary --  
23 Monterey Bay Marine Sanctuary, and that the tug and tow were  
24 outside of it. But I would make a proffer of that testimony,  
25 but understand that Your Honor is not willing to receive it; is

1 that correct?

2 THE COURT: Yes, that's correct. I've it noted for  
3 the record.

4 Let me ask Mr. Jacobson something here.

5 If you could go back to one of the pictures of the dry dock  
6 in daylight?

7 I just made the assumption -- and I'm not sure why I made  
8 that assumption -- that when it capsized -- did you say it  
9 capsized?

10 THE WITNESS: Yes.

11 THE COURT: When it capsized, the port side went down  
12 first, and it rolled?

13 THE WITNESS: It rolled, and then it stayed upside  
14 down for about 50 minutes, and when it sank, it pitched up  
15 vertically, and then went down.

16 THE COURT: Thank you.

17 THE WITNESS: Yes.

18 MR. GASPICH: Your Honor, actually, you reminded me of  
19 a further question. If I might?

20 THE COURT: All right.

21 Q. (By Mr. Gaspich) That sequence about when it capsized, and  
22 then you said it came up on end.

23 A. Uh-huh.

24 Q. Okay. Was it under the water when it came up?

25 A. About three-quarters of it was underwater when it was in

1 the process of sinking, and then it pitched up, about half of  
2 it, and then it went down.

3 Q. And did you see any other things happening with the dry  
4 dock around that time, or did hear any noises, see any --

5 A. Oh, yeah, yeah. When it pitched up vertically, you could  
6 hear metal-crashing noises, so I'm assuming probably bulkheads,  
7 internal bulkheads breaking, and all the air escaping out of it.

8 Q. And did you actually see anything related to air, or was it  
9 something you heard?

10 A. It was something you heard.

11 Q. And was it loud?

12 A. Yes.

13 MR. GASPICH: Thank you.

14 THE COURT: Mr. Jarrett, cross-examination?

15 MR. JARRETT: Yes, please. It will probably take me  
16 longer to get to the podium than it will to ask questions.

17 THE COURT: I may hold you to that, Mr. Jarrett.

18 MR. JARRETT: Please do.

19 CROSS-EXAMINATION

20 BY MR. JARRETT:

21 Q. Mr. Jacobson, when you are standing watch, and you're  
22 making notes in the log, and you're measuring the weather  
23 conditions and the sea conditions to note in the log, it's  
24 important to be accurate with those, isn't it?

25 A. Yes.

1 Q. And do your best to get the wind speed, for example, as  
2 accurately as you can, right?

3 A. Yes.

4 Q. And measuring the wind speed and the sea state is a skill  
5 that you have built, I guess, as a mariner, right?

6 A. Yes.

7 Q. You wouldn't want, for example, a lawyer off the street to  
8 go and try and measure the sea state of anything that you cared  
9 about floating, would you?

10 A. Yes.

11 Q. I said that question terribly, Mr. Jacobson. So apparently  
12 you wouldn't want this lawyer asking you questions, either.

13 A. No.

14 Q. But my point is that you just want -- as a mariner, you  
15 know the importance of measuring the wind and the sea as  
16 accurately as possible, and you've developed the skill to do  
17 that by standing watch in the wheelhouse of Western's and over  
18 operator's vessels, right?

19 A. Yes.

20 Q. So, also, when you are standing watch and you notice some  
21 difficulty in maneuvering a tugboat due to the tow behind it,  
22 you note that in the log, don't you, if you have trouble moving?

23 A. That could be something that should be put in the log, yes.

24 MR. JARRETT: Can you put page 10 up, please,  
25 Ms. Ivie? I need to go to the 25th, please, so the page

1 previous. 10/26, so I need 10/25. Sorry.

2 Q. (By Mr. Jarrett) So on the screen in front of you,  
3 Mr. Jacobson, is the page of the vessel's log from October 25,  
4 isn't it?

5 A. Yes.

6 Q. And as far as time goes, which of those entries correspond  
7 to your watch?

8 A. If you see up in the top portion, here and here, those are  
9 the times I was on watch, and here.

10 Q. Okay.

11 And I think you said at some point during that watch, you  
12 noticed -- just to paraphrase -- you noticed some difficulty  
13 maneuvering the tug because of the tow. Did I paraphrase that  
14 correctly?

15 A. Yes.

16 Q. Is that difficulty noticed in any of the log remarks that  
17 correspond to your watch?

18 A. To my watch? No.

19 Q. All right. So two more things.

20 Mr. Jacobson, you noticed some -- eventually -- you and  
21 Mr. Cowgill noted some change in the tugs -- sorry. You noticed  
22 a change in the list of the dry dock. We talked about that at  
23 some length just a minute ago, right?

24 A. Yes. I noticed a difference from, again, the beginning,  
25 when we noticed the list, until we got visual confirmation

1 before the capsize, yes.

2 Q. All right.

3 Did the people on the tugboat communicate that to the  
4 Western home office?

5 A. I don't know.

6 Q. Did anyone ever tell you that anyone at Vigor had said this  
7 dry dock cannot sink?

8 A. I saw an email from Vigor that, basically, stated this  
9 is -- with all the port tanks flooded, and it will not sink with  
10 all the port tanks flooded, is, basically, what it said, from my  
11 recollection.

12 Q. All right. So you saw that after the dry dock sank, during  
13 the course of this litigation, I assume; is that right?

14 A. I believe -- yes, yes.

15 Q. Okay.

16 So did anyone tell you -- at the time of the dry dock  
17 sinking, or during the voyage before it sank, did anyone tell  
18 you, "Vigor says this thing can't ever sink." Do you remember  
19 anyone saying that?

20 A. No, I don't remember anyone ever saying that.

21 Q. Or words to that effect. To make up for my poor grammar:  
22 Did anyone ever say that Vigor said this thing cannot sink?

23 A. I do not recollect.

24 MR. JARRETT: Okay. That's all the questions I have  
25 for you. Thank you, sir.

1 MR. GASPICH: Nothing further, Your Honor.

2 THE COURT: Mr. Jacobson, thank you. You may step  
3 down.

4 THE COURT: Counsel, let's go ahead and break now, and  
5 we'll start up at one o'clock. That will give you an hour and  
6 ten, hour and fifteen minutes.

7 We'll be in recess.

8 (Court in recess 11:46 a.m. to 1:02 p.m.)

9 THE COURT: Counsel, you may call your next witness.

10 MR. GASPICH: Thank you, Your Honor. We call John  
11 Cowgill.

12 THE COURT: Mr. Cowgill, if I can have you make your  
13 way up before the clerk, and raise your hand to be sworn.

14 JOHN COWGILL,  
15 having been first duly sworn, testified as follows:

16 THE CLERK: Please state your full name for the  
17 record, and spell it for the court reporter.

18 THE WITNESS: John Cowgill. That's C-o-w-g-i-l-l.

19 THE COURT: Mr. Cowgill, I think you're about right  
20 for the microphone in terms of distance. Keep your voice up so  
21 everyone can hear you. If you don't understand a question asked  
22 by counsel, say so, and we'll get them to rephrase it. Please  
23 don't speak over the question. Wait until he's done before you  
24 answer.

25 You may inquire.

## 1 DIRECT EXAMINATION

2 BY MR. GASPICH:

3 Q. Mr. Cowgill, were you employed as the chief mate of the  
4 *Ocean Ranger* during the tow of the YFD 70?

5 A. Yes.

6 Q. Do you hold a maritime license?

7 A. Yes, 1600-ton oceans.

8 Q. How long have you worked at sea?

9 A. At sea, 45, 50 years.

10 Q. Fifty years?

11 A. You were asking how long have I worked at Western Towboat?

12 Q. No. How long have you worked at sea.

13 A. Yeah, exactly.

14 Q. A long time?

15 A. Right.

16 Q. Okay.

17 Have you always worked in the towboat industry?

18 A. No, just for the last 20 years.

19 Q. Prior to that, where did you work?

20 A. Commercial fisherman in Alaska.

21 Q. You're used to some weather.

22 A. Yes.

23 Q. Just to be clear, when did you first start with Western  
24 Towboat?

25 A. 2002 April.



1 Q. And what positions have you worked aboard their tugboats?

2 A. All the way from the deckhand through the second mate,  
3 first mate; did some skippering.

4 Q. As chief mate on the *Ocean Ranger*, what were your  
5 responsibilities?

6 A. I had the watch before the skipper. My responsibility was  
7 kind of the day-to-day of the boat, kind of second in command,  
8 unless we have an uppity engineer, then we'd have to allow that  
9 he was second in command, to keep him happy. But other than  
10 that, kind of dealing with the crew, you know? And in my  
11 experience, I did a lot of mending of the lines and stuff,  
12 making sure the deck was always prepared for whatever job we  
13 had.

14 Q. And you said navigation watch right before the skipper.  
15 Was that the 3:00 to 7:00 watch?

16 A. It was 3:00 to 7:00 in the morning, 3:00 to 7:00 in the  
17 afternoon.

18 Q. As chief mate, did you have any particular responsibility  
19 for weather?

20 A. Yes. I'd usually listen to the weather at four o'clock,  
21 write it down on a Post-it note or a legal pad, and leave it for  
22 the skipper peruse.

23 Q. And when you say you listened to the weather, what weather?

24 A. NOAA.

25 Q. And how did you listen to it?

1 A. Usually over the VHF.

2 Q. Did you receive written reports, or do you have to listen  
3 to it by the radio?

4 A. We did get those. Again, I'd usually listen to the morning  
5 weather reports or the weather reports over the NOAA VHF. We  
6 were getting reports from the office, and I think the skipper  
7 was pulling them off the computer as well. Lots of weather  
8 reports.

9 Q. When you're standing watch, is it part of your  
10 responsibilities to keep track of the weather?

11 A. Yes.

12 Q. Okay.

13 As chief mate on the *Ocean Ranger* during that particular  
14 tow, did you have any responsibility for making decisions about  
15 navigation? And I don't mean just specifically on your watch,  
16 but, otherwise; where the boat was going, what courses to steer,  
17 that sort of thing?

18 A. No, I was -- no.

19 Q. Okay. Going back to the weather for a moment, did you --  
20 besides using -- I think you said notepads --

21 A. Post-it, notepads. Yeah, we'd write it down so we could  
22 remember it for later that day.

23 Q. Did you also record weather observations in the vessel's  
24 logbook?

25 A. We did.

1 Q. Let me show you Exhibit 33, the deck log for the *Ocean*  
2 *Ranger*.

3 A. Okay.

4 Q. Okay. I'm picking out October 25th, 2016.

5 Did you write in the logbook?

6 A. Yes.

7 Q. Okay. And so the entries that appear during the times of  
8 your watch, those would be your entries?

9 A. 3:00 to 7:00, yes.

10 Q. All right. I'll just ask you about the weather.

11 So the weather observations would be listed under the  
12 columns "wind," "sea," and "weather"?

13 A. Yes.

14 Q. So under the "wind," I see there are numbers there. Let's  
15 take the entry for 12:15. That would have been one of your  
16 entries?

17 A. No.

18 Q. Oh, I'm sorry. Yeah, that was on me. I apologize.

19 How about the 1600 entry?

20 A. Yes.

21 Q. So there you have "SE 25." What does that mean?

22 A. Southeast 25 knots, coming out of the southeast.

23 Q. And I notice in some of the entries, I see, like, a 25 and  
24 a plus sign, and on other pages, there is usually two numbers  
25 with a dash.

1           So how do you -- when you write down estimates of wind, how  
2 do you arrive at that?

3   A.    I just observe the sea state, and usually that tells me a  
4 lot. There's variations due to the height of the boat. You  
5 know, I started in little, 20-foot fishing vessels, and  
6 everything looked huge. And, you know, moving onto this boat,  
7 everything looks smaller. I guess if I was on an aircraft  
8 carrier, it would look smaller yet.

9           I notice differences between people right before me and  
10 after me. It's just how they perceive it.

11          But I would be looking out at sea states, the size of the  
12 waves, you know, whether there is whitecaps, you know, how bad  
13 it is, you know, stuff like that.

14   Q.    So you've been at this game for 50 years, you said. I take  
15 it that you're fairly experienced when looking at the sea  
16 conditions to try to determine weather?

17   A.    Yes.

18   Q.    But is what you're saying, notwithstanding the experience,  
19 there's a lot of factors that affect the accuracy of your  
20 observations.

21   A.    Oh, yeah.

22   Q.    And was it your point, also, that one person may look at  
23 the same sea conditions and come up with a slight -- a  
24 completely different set of views as to what the speed is?

25   A.    Oh, yeah.

1 Q. And has that been typical through your career?

2 A. Yeah. I mean, one guy will look at it, and he's scared or  
3 if he's wanting to go home or whatever. It impacts what they  
4 write. It definitely does. After 50 years, I think it affects  
5 you less, because, just through the course of the years, it's  
6 been driven into your head.

7 Q. So you when wrote -- we took the one entry at 1600,  
8 southeast 25, would you say that that's your best estimate? It  
9 may, actually, be different from that?

10 A. Oh, yeah, yeah, that's my best estimate. And we do it --  
11 almost everyone is doing it in five miles-an-hour increments,  
12 too, so...

13 Q. Okay. At some point there was a problem with the tow on  
14 the *Ocean Ranger* of the YFD 70. When was that?

15 A. What's that?

16 Q. When did you first notice or were you first apprised of a  
17 problem with the tow of the dry dock?

18 A. I was not quite on watch. I think I was going on watch,  
19 and I went up to the wheelhouse, just to go up there, and I  
20 looked back at it, and just started studied it for about 15  
21 minutes, and just thought it was a little bit down by the head,  
22 you know. It wasn't -- it was a little bit hard to -- and the  
23 reason I had to spend 15 minutes on it is because we had, kind  
24 of, opposing seas, you know, and it was hard to really get an  
25 idea. But that's when I first noticed it.

1 Q. And can you remember the time and the date?

2 A. Remember -- no, not without looking at this log.

3 Q. Okay. Could you look at the page in front of you for  
4 October 25th?

5 A. 27th, did you say, or 25?

6 Q. You have October 25th in front of you?

7 A. Yes.

8 Q. And does that refresh your recollection of approximately  
9 when you first noticed it?

10 A. Yes.

11 Q. What time?

12 A. That would be 1430.

13 Q. Okay. So this says, "notice tow has port bow list, altered  
14 course for San Francisco." Do you know if that's the time when  
15 you first noticed it, or the time you altered course?

16 A. That would have been the time that we altered course. We  
17 probably noticed it a little bit before that.

18 Q. All right.

19 And what happened after you confirmed, in your own mind,  
20 that there was a list?

21 A. Well, what happened to me is, I went down to the galley and  
22 I met the skipper down there, and I mentioned it to him, and he  
23 said, "Yeah, I noticed the same thing," looking out the back of  
24 his stateroom, I believe. I'm not sure. But he -- he agreed  
25 there was something going on, and then we went up and studied

1 it, just watched it more, and that's when we come to the  
2 conclusion that we had an issue.

3 Q. Okay. So the log indicates that you left Cape Flattery  
4 around the 18th, and this is on the 25th, this is almost a week  
5 later.

6 During that time, until you noticed the list, did you  
7 observe any problems with the tow regarding its handling, or any  
8 problem whatsoever?

9 A. No.

10 Q. Did it track fairly true behind you, as you were towing it?

11 A. I think so, yeah. It would have been something I would  
12 have noticed. I mean, a bad tracking -- anything that tow that  
13 doesn't track well, yeah, is remarkable to us because, yeah, it  
14 affects our speed and everything else.

15 Q. And did you notice any list prior to this time?

16 A. No.

17 Q. Were you ever able to determine why the YFD 70 was listing?

18 A. Not definitively, no. I mean, we were on a tow wire  
19 three-tenths of a mile away from it. We could just look at it  
20 and speculate, I guess.

21 Q. Okay.

22 Now, you were on watch from 3:00 to 7:00 that night. After  
23 discovering the list, where did you head?

24 A. San Francisco.

25 Q. Were you involved with any of the discussions or decisions

1 to change course to San Francisco?

2 A. No.

3 Q. All right.

4 Did you observe the tow during your watch, during the 3:00  
5 to 7:00 watch on the 25th?

6 A. Yes.

7 Q. And what did you see about its condition?

8 A. It was just -- it noticeably had a list. I mean, we had an  
9 issue. It was just, I guess -- it was a little worse than when  
10 we initially saw it, you know, somewhat worse, and we just knew  
11 that we had an issue.

12 Q. During that your four-hour watch, did you ever see the list  
13 progress to a point where the deck -- it's been called the  
14 pontoon deck -- but the horizontal portion of it, did you ever  
15 see that below the surface of the water?

16 A. I don't recall that.

17 Q. Okay.

18 Now, there's been discussion about a safety meeting at 2300  
19 that evening; do you recall that?

20 A. Yeah.

21 Q. How did that come about?

22 A. It was a timely discussion of what we might do, you know,  
23 that we need to -- you know, whatever we might need to do. Let  
24 the tow slip, you know, whatever, you know, just kind of get on  
25 alert, everyone get on the same page as to whatever emergency,



1 you know, procedures might be.

2 Q. Okay.

3 You got off watch at seven o'clock, and now this was 11:00.

4 Were you up or sleeping during that period?

5 A. I was probably down. I was probably sleeping.

6 Q. And when you came up to the meeting, did the captain talk  
7 about what to do in case the dry dock sank?

8 A. Yeah.

9 Q. All right.

10 Did Captain McGavock indicate during that meeting to the  
11 crew that he thought it was going to sink?

12 A. No, I don't recall that at all.

13 Q. Did Captain McGavock indicate to the crew that he was aware  
14 that the dry dock had a severe list?

15 A. Not severe. I mean, just, you know, what we were watching,  
16 on my watch, the previous watch, so...

17 Q. You were up at eleven o'clock, obviously, it was dark, but  
18 did you actually take a look out the window to look at the tow  
19 during this meeting?

20 A. Yeah. I couldn't see a lot, but I could tell that it was  
21 there still, you know, the boat was behind us with the nav  
22 lights and everything.

23 Q. But you couldn't really see the tow?

24 A. No.

25 Q. Okay.

1           If the tow at that time, at eleven o'clock on the 25th, had  
2   a 30-or 40-degree list, would you expect Captain McGavock to  
3   have told you that?

4   A.    Yeah.

5   Q.    And what happened after the meeting? What happen after the  
6   meeting concluded?

7   A.    I probably went back to bed. What was that, eleven o'clock  
8   you said? So my next watch would be three o'clock, so it is  
9   always a good idea for me to get sleep because of those odd  
10   hours. So I would have been trying to rest up for whatever the  
11   next day was going to bring.

12   Q.    What is the next thing that happened with respect to the  
13   dry dock, that you were aware of?

14   A.    The next thing, I think I was awoken when they were going  
15   to release the tow. Is that the day you're talking about?

16           Yeah, they woke me up. It was the general alarm. I went  
17   up -- the second mate was in the wheelhouse and the captain was  
18   at the second steering station. I went back, and he released.  
19   I got there just as the wire went back over the end.

20   Q.    When Captain McGavock was releasing the tow, did you look  
21   at the dry dock?

22   A.    Yeah. I don't really -- I was more impressed with the wire  
23   going over. There were sparks flying and stuff like that. And  
24   Steve had his hands on his head. I think, as the skipper, he  
25   just realized, you know, the responsibility. It was really hard

1 on him.

2 Yeah, I think that's the only thing I remember is the wire  
3 going over and slapping the sides of the rails, kind of like a  
4 snake going...

5 Q. Do you remember whether the dry dock had capsized at that  
6 point?

7 A. I don't. I don't recall that. I just -- it was kind of a  
8 blur. I was just waking up, really.

9 MR. GASPICH: Okay. No further questions at this  
10 time, Your Honor.

11 THE COURT: Cross-examination?

12 MR. JARRETT: Yes, please.

13 CROSS-EXAMINATION

14 BY MR. JARRETT:

15 Q. Mr. Cowgill, I just have a couple of questions for you,  
16 sir.

17 So, Mr. Cowgill, was this tow the type of thing you were  
18 used to working on as a mariner for Western Towboat?

19 A. No.

20 Q. Did you ever see anything like this being towed behind a  
21 Western boat?

22 A. No.

23 Q. And what do you usually tow for Western? What's your usual  
24 tow?

25 A. Back then I was still on freight run, and that's a tow

1 that's kind of a milk run up through Southeast Alaska, dropping  
2 off freight.

3 Q. And what do you tow when you drop off freight?

4 A. It's called a deck barge, and it just has containerized  
5 freight on it.

6 Q. Sure. And when you tow a deck barge with containerized  
7 freight, do you get special instructions -- you, meaning the  
8 towboat -- do you get special instructions from the Western  
9 office, or anybody else, about how to do it?

10 A. Well, we certainly listen to either offices, AML, the barge  
11 operator -- or the barge runner, or our officer. We do that so  
12 often, we kind of know what we're doing.

13 Q. Yeah. And I apologize for interrupting you, sir. It was a  
14 silly question.

15 What I'm getting at is, when you tow those freight barges,  
16 do you, on the towboat, have a tow plan?

17 A. I think we have a standardized -- standard operating  
18 procedure, I guess, but I don't think they make up a tow plan  
19 for each individual -- you know, we do it every two weeks.

20 Q. Sure.

21 A. It's routine.

22 Q. All right.

23 And when you do that, you know more -- you, personally,  
24 Mr. Cowgill, know better about how the tow is going to react in  
25 weather and sea conditions, do you?

1 A. Say that again.

2 Q. Sure.

3 When you are familiar with the freight barge that you  
4 usually tow, you have a pretty good idea about how it's going to  
5 react in weather and sea conditions?

6 A. Yes.

7 Q. And with the YFD 70, did you think you had any idea about  
8 how the YFD 70 would act in the sea and in the various weather  
9 that you might encounter?

10 A. I had a trust that Vigor made it seaworthy for us to tow,  
11 and I felt good about that, and we towed it.

12 Q. Sure. Okay.

13 Because you were watching pretty close at the beginning --  
14 well, at least until it listed, you were paying more attention  
15 to it than you would one of the freight barges that you tow,  
16 more typically.

17 A. Definitely.

18 Q. All right.

19 Did you ever see the tow contract between Vigor and  
20 Western?

21 A. Contract? No.

22 Q. Did you ever see the recommendations from the tow surveyor  
23 that Vigor hired?

24 A. I did look through it.

25 Q. When did you see the surveyor's recommendations?

1 A. Say again?

2 Q. When did you see the surveyor's recommendations?

3 A. I think sometime before Flattery. They were up on the  
4 chart table, and I looked -- you know, I looked through them.

5 Q. All right.

6 MR. JARRETT: Can you pull those up for me, MaryAnn?  
7 Ms. Ivie. That'd be A-4.

8 Q. (By Mr. Jarrett) So you saw the trip-and-tow  
9 recommendations?

10 A. Uh-huh.

11 Q. You did see this document that's on the screen now, A-4,  
12 Mr. Cowgill?

13 A. Uh-huh.

14 Q. Is that a "yes," sir?

15 A. Yeah. I mean, it's six years, so I can't -- I know I  
16 looked through -- I looked through one back then, yes. Yes, I'd  
17 say yes.

18 Q. Okay.

19 MR. JARRETT: Ms. Ivie, would you put up the tow plan,  
20 please, which is A-2?

21 Q. (By Mr. Jarrett) Now, as I understood it, the tow plan was  
22 on the vessel.

23 A. Yeah, that's -- that's what I'm looking at, yeah.

24 Q. So now that I showed you two documents, Mr. Cowgill --

25 A. I'm sorry.

1 Q. No. You're okay. And, again, it was six years ago. I'm  
2 not beating up on you. I'm just trying to get clear here.

3 A. Yeah.

4 Q. So was the document that you saw on the vessel A-2, which  
5 is on the screen now, or the recommendations that were on the  
6 screen a minute ago?

7 A. This is what I remember, yeah --

8 Q. This being --

9 A. -- and I remember because it's got a boat on -- that was a  
10 familiar thing they did. They put the boat that was -- it kind  
11 of helps an old guy like me remember. So, there you go. That's  
12 our boat.

13 Q. So just in case you forget, here's what we're doing, we're  
14 driving a tugboat?

15 A. Right, exactly. Thank you.

16 Q. So you saw on the boat A-2, not A-4?

17 A. Right.

18 Q. Okay. And I thank you for clarifying.

19 So A-2 included some weather and sea guidance, didn't it?

20 A. Uh-huh.

21 MR. JARRETT: Can you page through the document,  
22 MaryAnn, until I can find the right page? It's the weather  
23 section.

24 Q. (By Mr. Jarrett) Here we are. We're looking at the page  
25 marked "Western Transport 166," and you see the section right

1     there in the middle called "weather," Mr. Cowgill?

2     A.    Yes.

3     Q.    And now that you see it blown up, is that what you remember  
4     being the weather and sea guidance from Western Towboat for the  
5     tow of the YFD 70 to Ensenada?

6     A.    Yeah. I probably read through this. I mean, don't  
7     remember specifically, but, yeah.

8     Q.    Okay. And this weather section of the tow plan says that  
9     you can only depart after you get favorable seas -- pardon me --  
10    favorable weather forecast of seas of 15 feet or less. And it  
11    also says that the tug master will ensure the weather data is  
12    continuously monitored and recorded for the tug boat's local and  
13    projected track, using a variety of sources. Do you see that,  
14    Mr. Cowgill?

15    A.    Uh-huh.

16    Q.    Okay.

17           So just so I'm clear, you never did see the recommendations  
18    from Vigor's surveyor about how that surveyor thought the tow  
19    ought to be towed down to Ensenada, did you?

20    A.    I don't -- can't remember that, no.

21    Q.    Okay. And remind me of your position on the *Ocean Ranger*.

22    A.    I am the chief mate.

23    Q.    So you're the second in command; is that right?

24    A.    Yes.

25    Q.    So the second in command of the vessel didn't get a copy of



1 the recommendations from the trip-and-tow surveyor; is that  
2 right?

3 A. Yeah.

4 Q. All right. And I think that Mr. Gaspich asked you these  
5 questions, but I need to get them for my own notes, Mr. Cowgill.

6 When you are on watch, part of your job is to note the  
7 weather and the seas that the vessel is encountering  
8 periodically; is that right?

9 A. Yes.

10 Q. And how do you go about estimating the weather and the seas  
11 that the vessel is encountering?

12 A. Look out at the seas, I guess, and -- you know, the height,  
13 et cetera.

14 Q. All right. So that's the seas. You have to figure out how  
15 to estimate the height of the seas from the wheelhouse. And  
16 I -- well, after 50 years, you can probably do it in your sleep,  
17 but do you look at a reference point and, from that, try to  
18 gauge the height of the seas?

19 A. Yeah. It's actually looking at the waves, and then, you  
20 know, the amount of water on top of them, basically, how far  
21 that's being blown down the back side of the wave. I mean,  
22 there's just -- yeah, I guess it's like you just said: 50  
23 years, I just kind of glance out there and I've got a pretty  
24 good idea what that wind speed is. If you know what the tide is  
25 doing, that will make it worse, better, et cetera.

1 Q. And you've probably have had occasion to train others in  
2 how to do it over 50 years. You've talked to people who haven't  
3 done it for quite as long as you have about how to estimate sea  
4 heights, right?

5 A. Yeah.

6 Q. So there's probably a right way to do it, and there's  
7 probably any number of wrong ways to do it; is that correct?

8 A. Well, I don't know if it's like that, if it's wrong. It's  
9 their perception. It's just different. People look at it  
10 differently, and I don't know if it's a wrong way. It's just  
11 it's experience, I guess.

12 Q. You bet.

13 And how many other watchstanders were on *Ocean Ranger* for  
14 this voyage?

15 A. Two.

16 Q. All right. Who are they?

17 A. Watchstanders would be Steve McGavock and Kyle Jacobson.

18 Q. And Captain McGavock and Kyle Jacobson, are they reasonable  
19 guys?

20 A. Yeah.

21 Q. Do they know how to do their job?

22 A. Yeah.

23 Q. Do they know how to -- by your observation, do they  
24 accurately estimate and then record the weather the vessel  
25 encounters?

1 A. I never really -- I think a lot of that is kind of a  
2 personal signature, you know, the way they -- I don't really  
3 check to see if they're accurate or not. I mean, I don't know  
4 how -- I guess they -- they just sent a satellite up five years  
5 ago that can actually tell you the height of a wave from  
6 wherever up in space. That's amazing to me. And that's  
7 accurate, I'm sure, because otherwise they wouldn't have done  
8 it, you know. But I think Kevin and Kyle -- Not Kevin, but  
9 Steve McGavock and Kyle both would -- yeah, they were fine at  
10 their jobs, yes.

11 Q. Okay.

12 So you don't look at their logs, their log sheet entries  
13 and say, Well, that's him, so I can discount it, I can disregard  
14 it because he doesn't know what he's doing? You don't say that  
15 about either one of those guys?

16 A. I wouldn't be sailing with them if I was doing that.

17 Q. That was my next question, sir, so that's great.

18 Okay. So part of the tow plan required the crew of the  
19 *Ocean Ranger* to monitor and record weather forecasts on the  
20 vessel's projected tracks.

21 A. Uh-huh.

22 Q. And you can look at that page if you want to refamiliarize  
23 yourself with it. And I think you described for Ms. Gaspich, in  
24 general, how you did that.

25 In litigation like this, sir, we have discovery requests,

1 and we work a lot with counsel for Western Towboat to exchange  
2 the documents that we think are discoverable. And we asked for  
3 documents regarding weather forecasts, weather observations from  
4 the vessel, and we didn't get any of the scratch papers or any  
5 of the notepads that you described to Mr. Gaspich.

6 So that brings me to wonder, what happened to them? What  
7 happens to those scratch pads that you use to pass along the  
8 forecast that you listen to? What happens after you write them  
9 down and leave them for the next watch?

10 A. Usually they'll just sit there for a day or two, and then  
11 be discarded.

12 Q. Sure. And so the weather forecasts that were on the  
13 scratch pads on the -- on the -- what table were those kept on?

14 A. The chart table.

15 Q. The chart table. The scratch papers that are kept on the  
16 chart table are thrown away after a period of time. So in this  
17 case --

18 A. Remember, this is just one way we were getting our weather.  
19 I think I explained that. They're getting weather from the  
20 office, and then he was pulling weather off the computer as  
21 well.

22 So this was just my old-fashioned way of, you know -- what  
23 we, basically, do on a freight run. I was used to doing it that  
24 way, so that's what I did.

25 Q. It's probably easy to get used to doing things after a few

1 years on water, huh?

2 So you kept the scratch pads on the chart table until  
3 somebody threw them away. And my only question is: Do you know  
4 if those scraps of paper were thrown away after the YFD 70 sank?

5 A. Not after.

6 Q. They weren't, huh?

7 A. No, I mean some were thrown away before.

8 Q. Sure.

9 A. And then the ones that were on the computer, the ones that  
10 Steve McGavock was -- you know, I don't know what happened to  
11 those. Steve probably had those someplace else I don't know.  
12 But those ones you're talking about, yeah, they were just part  
13 of the -- you know, kind of a triad of weather, the reports that  
14 we got.

15 Q. Right. And the information regarding the triad of whether  
16 reports that you got, all of that is gone, right?

17 A. You'd have to talk to Steve.

18 Q. Okay.

19 So now let's talk about -- let's talk about October 23 and  
20 24.

21 MR. JARRETT: Ms. Ivie, can you bring up those pages  
22 on the log sheet to help Mr. Cowgill remember those days?

23 Q. (By Mr. Jarrett) Mr. Cowgill, just to try and get you to  
24 where we are in the chronology here, this was midway during the  
25 voyage, before the list developed that you described for

1 Mr. Gaspich, and you encountered some weather on October 23 and  
2 24, didn't you?

3 A. Uh-huh.

4 Q. And when you were deposed by my partner, Dave Boyajian, one  
5 of the guys with the beard sitting over at counsel table with  
6 me -- boy, I stick out, don't I? -- you described the weather  
7 that you encountered starting on October 23 and going into the  
8 24th. Do you remember that?

9 A. Okay.

10 Q. Do you remember how you described the weather to  
11 Mr. Boyajian?

12 A. No, not exactly. Sorry.

13 Q. Okay. Because you used a particularly descriptive term.

14 A. Oh, I didn't say the f-word, did I?

15 Q. No. No, Mr. Cowgill, that wasn't the response I was  
16 looking for, but, no, you did not.

17 What you said was -- and I'll just remind you. This is at  
18 page 47 of your deposition transcript, and I can show you the  
19 page, Mr. Cowgill, or I can just tell you.

20 You said you recalled the weather encountered on those days  
21 because it was, in your words, "shitty." Do you remember that  
22 now?

23 A. The s-word.

24 Q. The s-word?

25 A. Yes, "s," "shitty."

1 Q. Do you remember that now, sir?

2 A. I guess so, yeah.

3 Q. And what do you remember about the weather now that I've  
4 reminded you about your testimony about the weather?

5 A. Yeah, I mean, it was blowing. You know, whenever you have  
6 wind into your face, or, you know, you're heading in a southerly  
7 direction, or southeasterly, and you have southeast weather,  
8 where the wind is coming from, it's a concern.

9 Q. Okay. So you're looking at the log sheet for October 23.  
10 Can you remind me which entries you made, sir?

11 A. It would be the 4 and 6, and the 1600. That's the only  
12 other one I see of mine.

13 MR JARRETT: Okay. So then go to the 24th, please,  
14 Ms. Ivie, the next page.

15 Q. (By Mr. Jarrett) So what memorable weather do you see  
16 noted there on the log sheet?

17 A. 35, 40 southeast.

18 Q. 35, 40 southeast, and that starts at 0400 or so? No.  
19 Sorry. It starts at two o'clock; is that right?

20 A. Yeah.

21 Q. And you said that weather was blowing in your face?

22 A. Uh-huh.

23 Q. Sorry, sir. Is that a "yes"?

24 A. Oh. Yes. I'm sorry.

25 Q. No, it's okay. I do it all the time.

1           And in the seas you were encountering, were -- can you tell  
2 me which seas notations you made there?

3   A.    At four and six, so it would be 10 to 12.

4   Q.    And you've been, sort of, estimating sea height for a long  
5 time. At this point, this is, you know, five or six years ago,  
6 so 45 years on the water at that point, roughly?

7   A.    Yeah.

8   Q.    So are you pretty confident in those estimates that you  
9 wrote down on the log sheet?

10   A.    Yes.

11   Q.    So you're pretty sure, then, that the vessel was  
12 encountering seas on the nose that were ten feet or bigger; is  
13 that right?

14   A.    Yeah, yeah -- yes.

15   Q.    All right. Okay.

16           And you don't know because you never saw it. You don't  
17 know if those seas or bad weather would end any restrictions  
18 that the surveyor attempted to impose, do you? You don't know?

19   A.    No. That was Steve's job.

20   Q.    All right. So then -- and I don't mean to drag you back  
21 into all this stuff about the capsizes, but I'm just curious.

22           When the YFD started to list, you reported that to Captain  
23 McGavock?

24   A.    Yes.

25   Q.    And got him up -- he was off watch at the time, but you got



1 him up --

2 A. He was already up making a cup of coffee.

3 Q. Okay. So you'd just come on watch. You told him the thing  
4 is listing. Did you report it to Western management?

5 A. I did not. That would have been Steve.

6 Q. Okay. Are you aware if Mr. McGavock reported it to Western  
7 management?

8 A. I don't recall that.

9 Q. Okay. All right.

10 And you weren't sitting there in the wheelhouse with him  
11 throughout this whole chain of events, but do you know how many  
12 times Captain McGavock was reporting to Western Management  
13 the --

14 A. No.

15 Q. I'm sorry. I just need to finish the question, and then  
16 you can let me know.

17 Strike that.

18 Do you know how many times Captain McGavock reported the  
19 changing in the dry dock's listing to Western management?

20 A. No, I do not.

21 MR. JARRETT: Thank you, sir. Those are all the  
22 questions I have for you. Thank you for your time.

23 MR. GASPICH: Very brief follow-up, Your Honor?

24 THE COURT: Yes.

25 REDIRECT EXAMINATION

1 BY MR. GASPICH:

2 Q. Counsel just asked you about a surveyor, Bowditch Marine,  
3 who did some towing recommendations or a survey of the tow in  
4 this matter.

5 Do you know Captain Shaw?

6 A. I do not.

7 Q. Okay. And I'm going to show you Exhibit A-4, the towing  
8 recommendations, and this is the one that you have clarified you  
9 did not see this aboard the vessel; is that correct?

10 A. Yes.

11 Q. All right.

12 And if you look at the bottom of the second page, there is  
13 a date of January 7th, 2021.

14 A. Yes.

15 Q. So if this document was issued on January 7th of 2021, you  
16 certainly would have seen it -- would not have seen it?

17 A. No, I would not.

18 Q. So luckily, that wasn't the day it was issued. Counsel  
19 represented early to the court that it was, actually, presented  
20 with a tow survey that Captain Shaw had done of the tow.

21 A. Oh.

22 Q. So I'll show you Exhibit A-5, and could we go down to the  
23 last page, please? And Exhibit A-5 has a date of October 18,  
24 2016, that it was issued. Okay?

25 When did the tow leave Seattle? Do you remember?

1 A. November? Actually, I don't know the exact date. I'd have  
2 to look at the logs.

3 Q. Okay. Can we pull up the log?

4 A. Yeah, so it was October 25th.

5 Q. Wait. Wait.

6 A. Oh, yeah, I see.

7 Q. Showing you the log page for October 17th, 2016, is that  
8 the day that you left?

9 A. Yes.

10 Q. So if Captain Shaw issued his so-called survey and  
11 so-called recommendations on the 18th, you couldn't have seen  
12 it.

13 A. Yeah, right.

14 MR. GASPICH: That's all I have. Thank you.

15 MR. JARRETT: Can I -- it might be two questions, Your  
16 Honor.

17 THE COURT: You may.

18 RECROSS-EXAMINATION

19 BY MR. JARRETT:

20 Q. Mr. Cowgill, is there a radio or other means of  
21 communicating with the Western office on the *Ocean Ranger*?

22 A. There's a single side band. I'm not sure. Can you ask  
23 that question again?

24 Q. You bet.

25 After the *Ocean Ranger* pulls away from the dock and it's

1 still in Puget Sound, before it makes the turn to Flattery, is  
2 it possible for anyone on the *Ocean Ranger* to talk to the  
3 Western home office by any means of communication?

4 A. Yes.

5 Q. Does that happen occasionally?

6 A. Yes.

7 Q. So and even further out, after you turn at Flattery, do you  
8 occasionally communicate with the home office by radio or other  
9 means?

10 A. Yes.

11 Q. So it's possible for the surveyor's recommendations to have  
12 been relayed by some means of communications to the *Ocean*  
13 *Ranger*, isn't it?

14 A. Yes.

15 MR. JARRETT: Thank you.

16 MR. GASPICH: Nothing further, Your Honor.

17 THE COURT: Mr. Cowgill, thank you. You may step  
18 down, and you're free to go.

19 MR. SIMMS: Western will call Fred Pickhardt.

20 FRED PICKHARDT,  
21 having been first duly sworn, testified as follows:

22 THE CLERK: Please state your full name for the  
23 record, and spell your last name for the court reporter.

24 THE WITNESS: Fred Pickhardt, and that's spelled  
25 P-i-c-k-h-a-r-d-t.

1 THE COURT: Mr. Pickhardt, I believe you've heard the  
2 court's instructions to the other witnesses.

3 THE WITNESS: Yes.

4 THE COURT: Okay. So don't speak over counsel's  
5 questions. I know it's hard because sometimes you're not quite  
6 sure when they're finished, but give it that extra beat before  
7 you answer.

8 THE WITNESS: I'll try.

9 MR. SIMMS: Your Honor, before we move into  
10 Mr. Pickhardt's testimony, the parties have talked and agree  
11 that Exhibit 10, which is the dry dock operating manual,  
12 beginning with Vigor Bates No. 2884, is authentic and  
13 admissible.

14 THE COURT: Thank you.

15 Madam Clerk, 10 is admitted.

16 (Exhibit 10 admitted.)

17 MR. SIMMS: When we were going through the expert  
18 reports and also reporting that each party agreed that the  
19 experts were qualified, I skipped over Fred Pickhardt's report,  
20 15, and so I want to make sure that is entered, too.

21 MR. JARRETT: No objection.

22 THE COURT: Thank you, counsel. Madam Clerk, 15 will  
23 be admitted.

24 (Exhibit 15 admitted.)

25 DIRECT EXAMINATION

1 BY MR. SIMMS:

2 Q. Mr. Pickhardt, you have been here throughout the testimony  
3 and heard a good bit of testimony about the weather and  
4 available resources and things like that. And since your report  
5 is admitted and your qualifications at the end of the report are  
6 detailed, I won't go into those, but is it fair to say you have  
7 a good bit of experience as a meteorologist?

8 A. Yes.

9 Q. And, specifically, in ocean-related meteorology?

10 A. Yes, I do.

11 Q. All right.

12 Now, let's start with Ken Campbell's report, the expert on  
13 the call related to weather on the Vigor side. Have you  
14 reviewed Mr. Campbell's report?

15 A. I have.

16 Q. And do you have any opinions to express, to a reasonable  
17 degree of meteorological certainty, about Ken Campbell's report  
18 in rebuttal.

19 A. Well, I did read through the report, and the report was  
20 based on a hindcast. That means a forecast made after the fact  
21 based on information that would have been available at the time.

22 In the report, it states that they used solely the GFS  
23 computer model. The GFS model is NOAA's main forecasting model  
24 to forecast weather. It's one of many models. So it was  
25 strictly done through a model and not an actual forecast that a

1 meteorologist would do.

2 Now, a meteorologist would look at the model, yes, and  
3 maybe look at several models, look at input from observations,  
4 look at tracking of storms, a number of items, and then make a  
5 forecast based on a number of inputs, not just rely on one  
6 model.

7 Q. All right.

8 And in your experience, is the GFS model, used alone, the  
9 most accurate model to use?

10 A. In my experience, it's a good model, but it's probably not  
11 the most accurate. The European model tends to outperform it.  
12 There are other models that are equivalent. Japan has one,  
13 Canada has one. There's a number of them. I don't remember all  
14 of them.

15 Q. So to obtain the most accurate forecast, would you rely  
16 solely on the GFS model?

17 THE COURT: Mr. Pickhardt, hang on a second. Can I  
18 have you push that mike back a little bit? You're a good  
19 speaker and you're loud enough, but you're blowing out my court  
20 reporter's ears.

21 THE WITNESS: Sorry about that.

22 THE COURT: You may continue.

23 Q. (By Mr. Simms) To obtain an accurate forecast, would you  
24 rely only on the GFS model?

25 A. No.

1 Q. And do you have any other observations about Mr. Campbell's  
2 report concerning routing and predictability of weather along  
3 the appointed route?

4 A. Well, in the report that used the GFS model, at time the  
5 vessel left, it indicated that weather would not be an issue  
6 down around the 23rd, 24th off of California, and as it turns  
7 out, it was an issue.

8 Q. If, instead of Rich Courtney, Western had gotten Ken  
9 Campbell, Vigor's chosen weather router, apparently, and gotten  
10 the route, Ken Campbell's route would have been wrong for the  
11 24th and 25th; is that what you're saying?

12 A. From the hindcast that was offered, yes.

13 Q. Okay. And is there any other reason that that report was  
14 accurate?

15 A. Well, it was based -- I mean, when you're using a model,  
16 the models tend to be accurate at the beginning.

17 So what a model does is -- NOAA takes input from all kinds  
18 of observations -- satellite, ships at sea, airports, balloon  
19 observations, radar -- they create an initial condition and feed  
20 that into a computer, and then the computer calculates how the  
21 air masses will change in steps. It usually -- it can be  
22 hourly, it can be three hourly, and they can run these things  
23 out for two weeks.

24 Now, of course, if you're looking at three hours from the  
25 initial, it's very, very accurate. And as you go out 24, 48



1 hours, it's -- it's accurate. And you go beyond that, and you  
2 start getting uncertainties. And you get out five or six days,  
3 oftentimes it is significantly different than what actually  
4 happens.

5 Q. And so if Western had gone to Ken Campbell, even, say, on  
6 the 17th, the day of departure, in your experience using what  
7 Ken Campbell used, could Western have gotten a reliable report  
8 about what weather they would experience October 25th, on the  
9 17th, asking, Ken, what are we going to see on the 25th?

10 A. Well, if he was actually asked to do it, real-time, he  
11 might have done it in a different method, but he said that he  
12 doesn't use any NOAA input, so relying on the hindcast that was  
13 produced, it wouldn't have been accurate.

14 Q. So you saw the discussion -- and it was brought up -- about  
15 the Iowa State University record. I'm going to pull that up,  
16 which is 92, Vigor's file.

17 So what is this, in your professional experience?

18 A. Well, this is discussions. NOAA meteorologists will  
19 discuss what's going on with the forecast. They may talk about  
20 what could go wrong. They might talk about things like is the  
21 models in agreement, are models not in agreement? It's similar  
22 to notes that you're leaving for your next shift. It is not an  
23 official forecast.

24 Q. It's kind of like a chat room for meteorologists?

25 A. Yeah. It might be something akin to night orders from a

1 captain at sea, or the exchange between one watch officer coming  
2 on watch and the previous watch officer's giving him the  
3 situational awareness. This is what's going on; be careful,  
4 this might happen. These are notes meant for a meteorologist.

5 Q. In your professional opinion, are these the kind of notes  
6 that are a source for predicting weather?

7 A. No.

8 Q. Why is that?

9 A. It's not for the public. This is a source for other  
10 meteorologists coming on to see what's going on, to have a  
11 continuation from one watch to another. These are things that I  
12 see, these things could go wrong, this is accurate. You know,  
13 it's giving a situational awareness to the next meteorologist.  
14 It's not an official forecast at all.

15 Q. It's more comparing opinions?

16 A. Yes.

17 Q. And it's not something that you would rely on to make a  
18 forecast?

19 A. No.

20 Q. And so let's go what you would rely on in your professional  
21 experience, and we've heard a lot about gale warnings and all  
22 sorts of things that should have been picked up at the turn at  
23 Cape Flattery. So let's put ourselves at the -- coming out of  
24 Puget Sound. We're at Cape Flattery. We are on the 18th, I  
25 guess, late morning or so.

1           And did you, after hearing all that testimony, look back at  
2   the actual NOAA forecasts --

3   A.    Yes.

4   Q.    -- to see what was going on?

5           MR. BOYAJIAN:  Objection, Your Honor.  I believe the  
6   question was, After hearing testimony yesterday, have you  
7   created more opinions that were not in your report?

8           MR. SIMMS:  Rebuttal.

9           THE COURT:  Rebutting?

10          MR. SIMMS:  Rebutting the testimony that was put out,  
11   relying on what Ken Campbell said, that there was going to be  
12   absolutely no bad weather.  Rebutting this introduced as a  
13   reliable weather report supposedly showing the tug that they  
14   knew absolutely there was going to be a gale-force warning.

15          And so Mr. Pickhardt, in response, seeing this, saying,  
16   well, this isn't reliable.  I'm going to go back and I'm going  
17   to rebut what they say is reliable by looking at the NOAA  
18   forecast and then comparing it and telling you what I saw as a  
19   professional meteorologist.

20          MR. BOYAJIAN:  Your Honor, if I may?  This can't  
21   possibly be rebuttal to anything Ken Campbell said.  Ken  
22   Campbell hasn't been in the courtroom once all week.

23          MR. SIMMS:  Your Honor, it's the purpose of these  
24   experts being in here, to listen to the testimony of all the  
25   experts -- all the witnesses, not just the experts, and to rebut

1 the conclusions that they are drawing.

2 We've had an assertion that this is a competent  
3 meteorological record, and then Captain McGavock was  
4 cross-examined on it, and he's looking at it, and he says, yes,  
5 that seems to be what it says.

6 What we're going to hear from Mr. Pickhardt is, no, it's  
7 not a competent meteorology record. I look back now at the  
8 record to rebut this, and I looked at the NOAA record, and it  
9 doesn't say -- it's not what this says, and it's not what was  
10 available in the NOAA record, which is what the tug was looking  
11 at, to tell them at sea, making the turn.

12 MR. BOYAJIAN: Your Honor, yesterday, Captain McGavock  
13 testified that he had seen if not those similar forecasts, that  
14 he was aware of a gale -- a potential gale offshore; that he  
15 chose to make decisions to go offshore notwithstanding.

16 To the extent Mr. Pickhardt has opinions that he can use to  
17 rebut Mr. Campbell's testimony, he can assist Mr. Simms in  
18 preparing for cross-examination once we present Mr. Campbell's  
19 first-person testimony in direct, but this is not a rebuttal of  
20 any.

21 THE COURT: I agree, counsel. I think it's putting  
22 the cart before the horse. I think he's right. The objection  
23 is sustained.

24 Q. (By Mr. Simms) Let me ask it this way: When you're  
25 looking at forecasts, is it important to see what the timing of

1 the forecast is?

2 A. Yes.

3 Q. Okay.

4 And so you might have a forecast which is made at 1:00  
5 a.m. -- well, let me -- how often do the NOAA forecasts issue?

6 A. In most places, they do them every six hours.

7 Q. And is it important to know the areas that it covers? You  
8 heard --

9 A. Yes.

10 Q. -- Captain McGavock's testimony, which is that there are  
11 large -- my hearing, anyhow -- large area forecasts, and then  
12 there are forecasts for specific areas; is that right?

13 A. Correct. NOAA produces what's known as a zone forecast,  
14 both for land and for marine areas. The zone may go out as much  
15 as 60 miles off the coast, and it might be 60 to 100 miles north  
16 to south. So it is a rectangular box. And when they make a  
17 forecast, they're forecasting for anywhere in that area. So  
18 conditions may be similar but not exactly the same. But, for  
19 instance, if they forecast gale warnings within a zone, then  
20 that whole zone gets the gale warning.

21 Q. And you heard Captain McGavock's testimony. Did he refer  
22 to the specific time that he was reading the forecast about the  
23 gale warnings?

24 A. I don't recall.

25 Q. Okay. But would that be important to know?

1 A. Yes.

2 Q. And in relation to the time they left out of Cape Flattery,  
3 would that be important?

4 A. Yes.

5 Q. So, for example, if there was a NOAA forecast during the  
6 day of the 18th, but at 2:00 in the afternoon, that said this is  
7 it. Now, they make the turn, and then at 8:00 in the evening,  
8 once they have committed themselves and headed down towards the  
9 Columbia River, it reports a gale. Would that be something that  
10 could come up in the same day of forecast?

11 A. Yes.

12 Q. Okay. All right. And is that what you observed?

13 A. Yes, it was.

14 Q. Okay.

15 So what you observed was, looking at those forecasts, when  
16 they made the turn, no gale warning, and then when they picked  
17 up the forecast and made the turn, they had gale warning and  
18 they were committed?

19 A. Yeah, that's correct. NOAA issued a gale warning for the  
20 coastal waters from Cape Flattery, I believe, down to  
21 Shoalwater, which is, I think, down the coast, and they issued  
22 it around 9:00 p.m. Sunday night.

23 Q. Okay.

24 And so when that report came from NOAA, did you see that  
25 there was weather behind the tug; that is, where they had come

1 from?

2 A. When they rounded Cape Flattery, there were no gale  
3 warnings ahead of them at that time. The gale warning came up  
4 after they had made the turn, so probably 12 hours, roughly,  
5 maybe 15 hours later. They were in the zone already at that  
6 point.

7 But the forecast wasn't for that time. It was for the next  
8 day, late afternoon and evening, so the 19th, late afternoon and  
9 evening, was the timeframe for the gale warning for that zone.

10 And at that point, I believe from the navigation, that the  
11 tow -- the tug and the dry dock had already or would be south of  
12 that region before late afternoon on the 19th.

13 Q. Okay.

14 Is there anything else that is important to know about --  
15 in rebuttal to Ken Campbell's report?

16 A. I'm not sure what you mean. Could you rephrase?

17 Q. Have you said everything else that you've observed about  
18 Ken Campbell's report?

19 A. I know there was no -- the only thing I would mention was,  
20 he used a buoy that was down off the California coast. The  
21 vessel -- the tow had passed that, I believe, on the 24th, and  
22 that was the closest buoy, and he combined the wind -- he had a  
23 chart on there that had the wind and the gusts, and he combined  
24 them or averaged them out, which is not something that would  
25 normally be done.

1 Q. All right. Why?

2 A. Well, normally, when you have sustained winds, what it  
3 would mean is that the wind is blowing for a period of time and  
4 it's averaging at this amount. You may have fluctuations or  
5 gusts. So if fluctuations are more than nine or ten knots  
6 between the lull in the peak of the wind, they'll start calling  
7 those gusts, so they'll add those separately.

8 So the wind is averaging, let's say, 25 knots, there may be  
9 gusts up to 30 knots. One is a steady average one; the other is  
10 a momentary fluctuation.

11 Q. And you saw the tug logs. That's an average. Okay? And  
12 to you, as a professional meteorologist, what is that telling  
13 you?

14 A. So the logbook is showing the seamen's estimate of the wind  
15 and the sea conditions, based on the visual observation of  
16 waves.

17 And there's a comparison. NOAA produces a book. It's  
18 photographs that shows you what the sea would look like for  
19 these various Beaufort forces. Beaufort force, say, 5, the sea  
20 would look like this, and if it's Beaufort force 6, it would  
21 look like this, and so on. So you can compare what you see with  
22 these photographs, and you can estimate the wind from that.

23 Q. And so there is the forecast, but the most accurate  
24 on-the-ground way to record weather is what you see; is that  
25 correct?



1 A. Correct.

2 Now, some ships are equipped with an anemometer that  
3 measures the wind. The issue with that is, you have to subtract  
4 out the wind direction, the ship's direction and speed, because  
5 it affects it. If you're moving into the wind -- for instance,  
6 if you're driving in a car and put your hand out, you feel a  
7 strong wind, and that's created by the motion of the car. So  
8 you have to subtract that out before you can get the actual  
9 wind.

10 Also, with the smaller vessels, the anemometer is up, and  
11 as the boat is rocking, it's adding wind direction from the  
12 rocking. So often, I think, sailors or seamen will tend to look  
13 at the visual picture and estimate the wind that way, instead of  
14 trying to factor out all of those issues to get out a true wind.

15 Q. And in your professional opinion as a meteorologist, is it  
16 acceptable or reliable to only take a routing forecast?

17 Let me just put it this way. Okay?

18 If the only thing that the tug *Ocean Ranger* did was to get  
19 a routing forecast -- whether it was Rich Courtney or Ken  
20 Campbell or anybody else -- the only thing they did was to get  
21 that, and not look at anything else, like NOAA forecasts, would  
22 that, in your professional opinion, be a way to reliably know  
23 what's on the intended track?

24 A. No.

25 Q. Why's that?

1 A. You wanted to have as much input as you can to make a  
2 professional judgment.

3 Q. And it's one factor that you might use?

4 A. Yeah. You want to look at it, but you want to look at  
5 other sources.

6 Q. Okay.

7 And Ken Campbell's report, in particular, he had ran -- you  
8 saw -- an analysis of what he would have told about the intended  
9 track on the 17th, and that turned out to be dead wrong; that  
10 is, do you remember that he had said, If I had done a route  
11 track, by the 24th and 25th, good weather. Do you remember  
12 that?

13 A. Yeah.

14 Q. And he was dead wrong. Okay.

15 What did you observe the actual conditions to be on the  
16 24th and 25th?

17 A. They encountered winds that peaked between 25 and 35 knots.  
18 So that would be strong -- between strong, over six, to the very  
19 bottom part of a gale.

20 Q. And what did you observe about the conditions north of that  
21 area they were in on the 24th and 25th?

22 A. The conditions were worse the further north you went.

23 Q. So turning around was not an option?

24 A. I'm not a towboat operator, but I would think that would be  
25 a difficult thing to do.

1 Q. But, on the other hand, if Ken Campbell was the one they  
2 used to forecast, he gave a good-to-go forecast for everything  
3 at least past the 19th.

4 MR. BOYAJIAN: Your Honor, objection. That is not  
5 what Ken Campbell's report says, and Ken Campbell will be here  
6 tomorrow to answer that question.

7 MR. SIMMS: Okay.

8 THE COURT: Sustained.

9 MR. SIMMS: All right. I am finished with my  
10 questions.

11 CROSS-EXAMINATION

12 BY MR. BOYAJIAN:

13 Q. Mr. Pickhardt, did you review any of the deposition  
14 testimony in this case?

15 A. The only deposition I was able to watch was Ken Campbell's.

16 Q. Okay.

17 So you issued a report before any of the fact depositions  
18 for the vessel crew were taken in this case?

19 A. I didn't see any of the other.

20 Q. I know. You issued your report before any of those were  
21 taken?

22 A. Yes. I don't know when they were taken, but my report was  
23 issued before the deposition I witnessed.

24 Q. Okay. I'm talking about the crew depositions. Your report  
25 came out before the depositions of any Western crew members.

1 A. Okay.

2 Q. Afterwards, after we took those depositions, did you review  
3 those transcripts so that you can conform your report to  
4 anything that they had to say about how they made weather  
5 observations --

6 A. No.

7 Q. -- or about how they received weather forecasts?

8 A. No.

9 Q. About what weather information they relied on?

10 A. No.

11 Q. Okay.

12 What is a forensic weather expert? What do you do?

13 A. I normally review weather conditions that affected an  
14 incident. So it could be -- in the maritime industry, it could  
15 be a collision, it could be a sinking, it could be an injury,  
16 somebody is injured because of rough weather, I will write a  
17 report and investigate what the actual conditions were at the  
18 time of the incident.

19 Q. Okay.

20 So also a report that looks at weather from hindsight?

21 A. Yeah, I'm looking at historical records.

22 Q. Okay. Looking at records to determine what happened?

23 A. Yes.

24 Q. All right. So hindsight?

25 A. Yes. But it's not a hindcast, it's not a forecast, it's an

1 analysis of actual conditions.

2 Q. Okay. And we'll ask Mr. Campbell tomorrow whether he would  
3 call his a hindsight or a hindcast. But both of you are looking  
4 backwards at what happened in the past?

5 A. I was looking backward at the actual conditions, and I  
6 believe the report was giving a forecast based on conditions or  
7 information that was available at the time.

8 Q. Okay. He'll be able to characterize that.

9 So you're one of two experts, then, that have issued an  
10 opinion in this case that have to do with the weather; yourself  
11 and Dr. Kriebel?

12 MR. SIMMS: Objection, Your Honor. That's not what  
13 the Kriebel report says at all. Dr. Kriebel will testify about  
14 wave conditions. Mr. Pickhardt has not talked about wave  
15 conditions. He's talked about weather conditions. There's not  
16 a duplication.

17 THE COURT: All right. Aside from the  
18 characterization, do you have a question?

19 MR. BOYAJIAN: I will move on, Your Honor.

20 Q. (By Mr. Boyajian ) Did you see, before you prepared your  
21 report, the two different sets of weather restrictions  
22 applicable to the *Ocean Ranger* in this case?

23 A. No.

24 Q. The Bowditch recommendations, you've sat in trial and  
25 you're now aware that they don't leave without a forecast less

1    than eight feet, 21 knots, don't go into seas greater than eight  
2    to ten feet.  You've been here all week.  You've seen those now?

3    A.    I've seen them now, but I don't remember when I first saw  
4    them.

5    Q.    But not before you wrote your report?

6    A.    No.

7    Q.    And have you seen the second set, as I'll call them, the  
8    ones that Western put in their tow plan, an imperfect transfer  
9    of Captain Shaw's recommendations, and that was 20 to 25 knots  
10   and eight to ten feet, ideally?

11   A.    I haven't seen that.

12   Q.    You haven't seen that while you've been in the courtroom?

13   A.    Yeah, yeah, here I have.

14   Q.    Okay.  So those recommendations were less than 22 knots and  
15   eight feet -- eight to ten, 20 to 25 knots, eight to ten.

16         What is a gale warning?

17         So you've seen these recommendations less than 22 knots,  
18   less than eight feet, or don't leave; less than eight- to  
19   ten-foot seas throughout the trip.  That's Captain Shaw.

20         Western's version, Jeff Slesinger's version that he copied  
21   out of the towing recommendations that were provided to Western,  
22   as he testified, 20 to 25 knots, eight to ten feet.  You've seen  
23   those now?

24   A.    Yes.

25   Q.    Okay.

1           What is a gale warning?

2       A.    A gale warning is frequent gusts of at least 34 knots.

3       Q.    Okay. So 50 percent higher than the 21-knot restriction  
4       that Captain Shaw imposed on the boat?

5       A.    I haven't done the math, but, yes, it's certainly higher.

6       Q.    And what about storm warning?

7       A.    Storm warning would be for winds of 48 knots to about 63  
8       knots.

9       Q.    Okay. So when you say there were no gale warnings or storm  
10       warnings available -- published when they rounded Cape  
11       Flattery --

12      A.    Correct.

13      Q.    -- that doesn't actually relate very closely at all to the  
14       restrictions imposed by Captain Shaw or the way they were  
15       transferred into Western's tow plan.

16      A.    No, I reviewed the -- if there were any NOAA marine  
17       warnings at the time.

18      Q.    Okay.

19      A.    And that would be gale or storm warnings.

20      Q.    Well, there are also small-craft advisories, right?

21      A.    Right, but those aren't warnings, they're advisories.

22      Q.    I understand.

23           In the Pacific Northwest -- small-craft advisories have a  
24       regional definition, don't they?

25      A.    Yes, they do.

1 Q. Do you know the definition in the Pacific Northwest?

2 A. Well, generally speaking, for each region, I don't know  
3 them all, but it can be anywhere between 20 knots and 33 knots.  
4 Most regions use 25 knots as a minimum, some use 20.

5 Q. Okay.

6 You've been in there this week. Have you also heard that  
7 the regional version can -- you can issue a small-craft advisory  
8 for seas in excess of ten feet?

9 A. Yes.

10 Q. So wouldn't a more pertinent thing to include in your  
11 report be whether or not there had been small-craft advisories  
12 issued, because that more closely relates to the restrictions  
13 that play in this case?

14 A. I wasn't asked to do that.

15 Q. I understand. You were asked a different question, which  
16 was, were there warnings for wind conditions at least 50 percent  
17 greater than Captain Shaw's recommendations, but I'm asking you  
18 a different question.

19 Did you include anywhere in your report at all, or analyze,  
20 whether there were warnings that had been issued that would have  
21 been closely related to the restrictions imposed on the *Ocean*  
22 *Ranger*?

23 A. Yes, but only in the coast of California, north of San  
24 Francisco --

25 Q. Okay. So --



1 A. -- not for Cape Flattery.

2 Q. So you were specifically not asked to address whether wind  
3 conditions in excess of the restriction would have been  
4 available -- forecast for those conditions would have been  
5 available to the *Ocean Ranger* at Cape Flattery?

6 A. Well, they would have been available. I wasn't asked to  
7 review that.

8 Q. Okay. So when your report says there were no gale warnings  
9 or storm warnings available, it doesn't actually say there were  
10 no forecasts that suggested there were conditions in excess of  
11 the restrictions?

12 A. Correct.

13 Q. All right.

14 I'm going to talk about but not put up your report. I'm  
15 sure you're familiar with it.

16 Page 7, you say, For a moment on October 19th and 20th,  
17 there was, quote, a brief period of fresh-to-strong winds.

18 When you're talking about that, are you talking about the  
19 ten-hour period where the vessel's logs indicate there were  
20 conditions in excess of Western's restrictions?

21 A. It was a period of winds that were up to 4-6 at  
22 approximately 25 knots. That would have been above -- that  
23 would be at the upper limit of those restrictions.

24 Q. I just want to be clear. As a lifelong sailor and former  
25 yacht captain, I understand what a fresh breeze is, but I think

1 it's a confusing term for those of us who haven't used it in the  
2 industry. So I want to pull up the logs, please, for the  
3 afternoon of the 19th.

4 What your report calls "fresh winds," what you're talking  
5 about here is the -- starting at 12:15, two, four, six, eight,  
6 ten -- at least ten hours of logged conditions exceeding the tow  
7 restrictions.

8 When you use the word "fresh breeze," that's the scene  
9 you're talking about, right?

10 A. Yes. My report is based on my analysis, not on the  
11 logbook.

12 Q. I understand.

13 And this is also 16 hours -- if we scroll onto the next  
14 page -- of consecutively logged conditions in excess of Captain  
15 Shaw's restrictions. But the way your report says it is, they  
16 encountered a fresh breeze -- a brief period of fresh breeze?

17 A. Fresh to strong --

18 Q. Okay.

19 A. -- strong being up to 27 knots.

20 Q. Okay. Okay.

21 A. Fresh, meaning starting -- roughly 20 to 25 knots.

22 Q. Okay. You said up to 27 --

23 A. That's the upper limit of strong.

24 Q. I understand.

25 A. What I analyzed was 25 knots.

1 Q. Okay. But we're talking about the same period of time that  
2 the *Ocean Ranger* logged -- two, four, six, eight -- at least  
3 eight hours with 30 and sometimes 35 knots. Same period of  
4 time?

5 A. Approximately.

6 Q. Okay. Thanks.

7 And then you skip ahead -- right? -- just straight to the  
8 23rd and 24th in your report?

9 A. Yes.

10 Q. And you said, on page 9, that it has, quote, been  
11 determined -- in the passive voice -- that the tug encountered  
12 20 to 25 knots of wind.

13 Could we go to the -- and scroll, if you would, please, to  
14 the next page.

15 We're talking about now, when you say that, the same period  
16 of time when the *Ocean Ranger* logged -- two, four, six, eight,  
17 ten -- twelve hours in excess of 35?

18 A. Yeah, approximately the same time, yeah.

19 Q. Okay. I just want to be clear, because you have different  
20 numbers.

21 But you heard the testimony, right, from Captain McGavock  
22 and both mates saying they're very careful and very experienced  
23 and very trained about making their observations and that  
24 they're confident about what they write in these logs?

25 A. I heard that.

1 Q. Okay.

2 And you're aware that, when Captain McGavock signs this, it  
3 becomes a sworn statement and sworn record of the vessel?

4 A. Yes.

5 Q. So this is the best record of what, in real-time, they  
6 observed, not what you created later from data?

7 A. That's their estimate of the winds based on visual  
8 observation of the waves.

9 Q. Okay.

10 Page 10 in your report, if you remember it, you say that  
11 you rely on National Weather Service and NOAA forecasting stuff  
12 for your report, right?

13 A. Yes. I was reviewing the NOAA National Weather Service  
14 marine coastal waters forecast.

15 Q. Do you remember Captain McGavock's testimony yesterday,  
16 when he said, Even though I saw warnings for gale force, I don't  
17 want to use warnings. That's a technical term. So our forecast  
18 that included the term gale-force winds, I sort of discount  
19 that, because I think the National Weather Service and NOAA  
20 exaggerate.

21 You don't think so, right, because that's what you rely on  
22 when you create your report?

23 A. Well, he meant -- from what I recall from the testimony, he  
24 was talking about that his experience was that the NOAA forecast  
25 may vary across a large area. The specific area may be

1 different than the entire area. So if there's a forecast of 30  
2 knots in a zone, it might not be 30 knots everywhere in the  
3 zone. That's how I remember it.

4 Q. You don't recall that he said he thought they exaggerate?

5 A. Yes, I do remember him saying that, yes.

6 Q. Okay. Thanks.

7 And then so you talk about your conclusion of 25 to 35 knot  
8 winds, even though the vessel logged significantly higher on  
9 their own observations.

10 The other piece, on page 9, that you make, is you report  
11 that the tow encountered significant wave heights of eight to  
12 ten feet. Tell us what a significant wave height is.

13 A. A significant wave height is defined as the average of the  
14 one-third highest wave. So if you have a number of waves, you  
15 take the highest third, and you take an average of that, and  
16 that's the significant wave. It's usually what the seamen would  
17 see when they report waves.

18 Q. Understood.

19 So when the seafarers were recording 10- to 12-foot waves,  
20 they're logging a significant wave height of 10 to 12?

21 A. Yes, I believe they were.

22 Q. Okay. Let's use your numbers, eight to ten feet. Ten is a  
23 nice one to go with. It's a round number.

24 How tall are the largest waves in a ten-foot significant  
25 sea?

1 A. The maximum wave could be up to 20 feet, approximately  
2 double the significant wave. That would be the highest,  
3 statistically.

4 Q. What percentage of waves are over ten feet in a ten-foot  
5 significance?

6 A. That would be roughly about 14, 15 percent, something like  
7 that.

8 Q. Okay. So three out of every 20, more than 10 percent. One  
9 out of -- more than one out of every ten waves would be over ten  
10 feet?

11 A. It could be, yes.

12 Q. Okay. So if a vessel had a ten-foot-wave-height  
13 restriction -- right? -- said don't be out in seas over ten  
14 feet, would a significant ten-foot sea contain at least ten or  
15 fifteen percent of waves higher than ten feet?

16 A. Yes.

17 Q. Okay. So when the vessel is logging eight to ten, one out  
18 of every ten, maybe two out of every ten, but one, one and a  
19 half are higher than ten feet?

20 A. Yes.

21 Q. Time of departure. In your report, you say on the 16th and  
22 17th, no gale and no storm warnings.

23 You've heard testimony all week that the critical time for  
24 decision-making was on the 18th, right, when you leave the  
25 sheltered waters of Puget Sound for the open ocean?

1 A. Yes.

2 Q. You didn't look at the forecasts for the 18 --

3 A. Yes, I did.

4 Q. -- when you were writing your report, did you?

5 Okay. On page 10, you specifically refer to forecasts  
6 available on the 16th and 17th. Why don't you talk about the  
7 forecasts available on the 18th?

8 A. The forecast that I looked at was for what would be  
9 available to the captain when they left Seattle, for rounding  
10 the Cape and making south. So that would be -- the forecast may  
11 be issued on the 17th, but the forecast period would be for the  
12 18th or 19th.

13 Q. Understood.

14 A. On the 18th, they would have already passed that area.

15 Q. Captain McGavock testified yesterday that 5:00 p.m. was his  
16 best estimation of when they rounded Flattery on the 18th, so  
17 that's 1700 hours.

18 Were there forecasts available that had been issued on the  
19 18th that were available before 5:00 p.m.?

20 A. Yes.

21 Q. Okay. At 6:00 p.m., Captain McGavock is only one hour  
22 south of Flattery. He could have turned around in good weather,  
23 right? Were there forecasts available on the 18th that would  
24 have been relevant to him?

25 A. The forecasts were issued at approximately around 3:00 p.m.

1 and then updated at 9:00 p.m.

2 Q. There are no forecasts issued by the National Weather  
3 Service or NOAA prior to 3:00 p.m. in the afternoon?

4 A. Prior to it, yes, every six hours.

5 Q. Okay.

6 A. They're issued approximately 3:00 p.m. and approximately  
7 9:00 p.m.

8 Q. Okay. But ever six hours. So, actually, on the 18th, if  
9 Captain McGavock says he rounded at 5:00 p.m., 1700, he actually  
10 had available to him at least three forecasts that day, right?

11 A. Yeah, he had a forecast that was available through 3:00  
12 p.m.

13 Q. Okay. Why doesn't your report on page 10 discuss any of  
14 those? It only discusses the forecasts available on 16th and  
15 17th?

16 A. I don't know.

17 Q. Is it because you weren't asked about those, too?

18 A. I was asked if there were NOAA marine warnings when the  
19 vessel departed Cape Flattery --

20 Q. Okay.

21 A. -- which, if I recall, I thought it was earlier than 1700,  
22 but we can check on that.

23 Q. Okay. Well, there's conflicting testimony. Captain  
24 McGavock has said 1700. Some of his mates have said as early as  
25 1400, 2:00 in the afternoon. But it's the captain's boat, so



1 I'm going to go with the captain.

2 You were asked, specifically, were there gale warnings or  
3 storm warnings on the 16th and 17th? But both of those numbers  
4 are far higher than the restrictions, and both of those dates  
5 cut off at least a set of three, maybe four forecasts that would  
6 have been available to Captain McGavock when he got to Flattery;  
7 am I right?

8 A. The last forecast that would have been able to him before  
9 rounding Cape Flattery would have been about 3:00 p.m.

10 Q. Right, and --

11 A. There were ones before that.

12 Q. Okay. That your report doesn't address, because you stop  
13 on the 17th, and then you jump forward until the 23rd; am I  
14 right?

15 A. I don't remember that, exactly what's in there, as far as  
16 the timing.

17 Q. Okay. It's in the report.

18 When was the very first day that a storm on the 23rd or  
19 24th would have been forecast or reasonably forecast? Right?  
20 Because there are -- when you're looking at forecasts out at  
21 sea, sometimes they say, We're watching a system that is giving  
22 us concern, but they haven't quite nailed it down yet.

23 What is the first date that the *Ocean Ranger* should have  
24 been aware or could have been aware that they might encounter  
25 tough conditions on the --

1 A. Probably Saturday -- I forget what the date was. I think  
2 it was the -- I don't recall the date, but I remember it was on  
3 Saturday.

4 Q. Well, the *Ocean Ranger* left on Monday, the 17th. They  
5 round Flattery on Tuesday, the 18th. They are in a storm the  
6 night of -- Tuesday night into Wednesday.

7 Let me just grab the log.

8 Okay. They leave on a Monday. Let's scroll down and find  
9 which day is Saturday, please. You just said that Saturday  
10 would be --

11 A. I don't have my report in front of me, but as I recall, it  
12 was Saturday.

13 Q. Okay. So Saturday, the 22nd, one day -- they had a one-day  
14 warning?

15 A. That was the first indication that winds were going to be  
16 an issue.

17 Q. Winds --

18 A. Exceeding 25 knots.

19 Q. Okay. I thought you had said before that the question you  
20 were asked was to answer when there were gale warnings.

21 A. That was for when they departed.

22 Q. Okay. So you were asked a different set of questions for  
23 the two different dates?

24 A. Off the coast of California, when they were approaching, we  
25 looked in detail at the NOAA forecast.

1 Q. Okay.

2 Your conclusions, two of them, for this storm on the 23rd  
3 and 24th -- you might have had more (inaudible) to me -- you  
4 said the *Ocean Ranger* encountered winds of up to 35 knots.  
5 That's your opinion notwithstanding the fact that you heard  
6 testimony say we're very careful about what we write in our  
7 logs, and the logs show winds in excess of 40 for a period of  
8 ten or more hours?

9 A. That is my opinion.

10 Q. Okay.

11 And then you say, And they encountered a combined sea swell  
12 state of 12-foot significant, and we talked about what  
13 significant waves are.

14 What is the maximum wave height you would expect to  
15 encounter in a 12-foot significant sea?

16 A. About 24 feet.

17 Q. Twenty-four feet.

18 You remember that the restrictions on this tow were ten  
19 feet?

20 A. Understood. Yes.

21 Q. Okay.

22 Last question I think I have: Western's counsel was asking  
23 you a question, Wouldn't it have been folly to only get a  
24 weather forecast from Rich Courtney? And I think you said,  
25 Yeah, that would have been a mistake.

1 Tell me if I'm paraphrasing your answer correctly.

2 You want as much input as you can possibly get.

3 A. Correct.

4 Q. Okay.

5 So Captain McGavock testified he was looking at a couple  
6 apps available on his phone. He testifies that he was looking  
7 at some NOAA forecasts but not the ones that the archive master  
8 at Iowa State says are the NOAA forecasts, and they're not  
9 anything that they kept a record of, because all of that has  
10 been thrown away, including the stuff they say they downloaded  
11 to their computer, which they must have physically deleted. All  
12 of that is gone.

13 Is there a reason that you wouldn't hire Rich Courtney if  
14 you want to get as much input as you can get?

15 A. That would be up to them.

16 Q. Right.

17 A. I would think you would want input, as much as you can, for  
18 this type of a tow. That might include a private meteorologist,  
19 but not any particular one.

20 Q. Okay.

21 What about if you promised to use, in writing, a particular  
22 one? Would it make sense to use that one?

23 A. Sure, yes. I don't remember or recall if they specifically  
24 said that particular one, but if it did, yes.

25 Q. Yeah, it did. It said, "Western Towboat will be using Rich

1 Courtney of Maritime" --

2 A. Yes.

3 Q. -- whatever his company is -- "for weather information and  
4 course guidance."

5 Do you do course guidance? Do you do routing?

6 A. Yes.

7 Q. What is course guidance?

8 A. So for ship routing, it is primarily for ocean passages,  
9 not coastal runs. So if you're going, say, from San Francisco  
10 to Tokyo, you want to take the route that will minimize time,  
11 but at the same time you want to avoid delays due to storms,  
12 injury to the ship and to the crew, damage to the ship and  
13 cargo. So it's a combination of the most efficient route  
14 without causing undue risk.

15 So you may give coordinates, like go to this point and then  
16 this point and that point, to minimize adverse weather  
17 conditions.

18 Q. You heard Captain McGavock rattle off a list of names of  
19 apps he was using on his phone. Did any of them perform a  
20 routing function?

21 A. I'm not familiar with all of them. Some offer some type of  
22 a routing. I've never used it or looked at it myself.

23 Q. Okay.

24 What about the NOAA weather forecast that get broadcast  
25 over VHF? Do they provide routing information?

1 A. No, they do not.

2 MR. BOYAJIAN: Thanks.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MR. SIMMS:

6 Q. We've heard a lot about the papers, things were written  
7 down on and not kept, and the court had something to say about  
8 that, too, in an earlier decision.

9 But let's say I wanted to go back -- what's a GRIB file, by  
10 the way?

11 A. A GRIB file is a computer file which contains geographical  
12 information, combined with something else, like if you have a  
13 weather map. That could be saved as a GRIB file.

14 Q. It's G-R-I-B?

15 A. Correct.

16 Q. Which stands for Gridded Information Binary Index.

17 A. Correct, yes.

18 Q. And if I went back to the GRIB files, as one source, I can  
19 pull up the NOAA forecast for any particular time?

20 A. It wouldn't be a NOAA forecast. It would be a model  
21 forecast, and, typically, it would be the GFS model.

22 Q. Okay.

23 So this Iowa thing, not reliable, but I could go back and  
24 get history for NOAA files, right?

25 A. Yes.

1 Q. I can find -- we talked about the three o'clock turning  
2 Cape Flattery. I can go back and I can get that forecast for  
3 Cape Flattery, right?

4 A. Correct.

5 Q. And, in fact, to test this, you did that, right?

6 A. Yes.

7 Q. And you pulled them right up. Where did you go to get  
8 them?

9 A. NOAA has the files. You download it from NOAA itself.

10 Q. You go right on the Internet, and you pull them up?

11 A. Yes. You have to know where to go. It's a little  
12 complicated, but, yes.

13 MR. BOYAJIAN: Objection here. We're talking about  
14 these files. We asked for these files. Mr. Simms has  
15 characterized them as easy to find. We spent weeks looking for  
16 them. The best facsimile we could find was through the  
17 archivist who issued a declaration supporting that these are  
18 directly pulled from the NOAA archives. He does it every day.

19 We asked Mr. Simms to produce these files that he kept  
20 saying were so easy to find. He never did, Your Honor, until  
21 the very last couple of days, before the end of trial  
22 preparation, frankly, at which point we said, We've been asking  
23 for a long time them for a long time (inaudible). So I would  
24 ask that we stop talking about how easy these are to find. They  
25 are not, and Western refused to produce them to us by repeated

1 requests.

2 Q. (By Mr. Simms) So these files that we're talking about,  
3 they came right off the Internet, right?

4 A. The GRIB files?

5 Q. The NOAA historical records.

6 A. Oh, yes.

7 Q. And that's something --

8 THE COURT: Mr. Simms, hang on.

9 So your objection is?

10 MR. BOYAJIAN: My objection is that we stop talking  
11 about these GRIB files that were requested and they were never  
12 produced, and we could not find ourselves, despite an engine  
13 search.

14 THE COURT: All right. So maybe you can come back and  
15 recross the witness on his answers. I don't really care much  
16 about what Mr. Simms is saying. I care about what the witness  
17 is saying.

18 Q. (By Mr. Simms) So could a professional trained  
19 meteorologist, like you did, get these records right off the  
20 Internet?

21 A. Yes.

22 Q. And they're free, right?

23 A. They are.

24 Q. Okay. So if I wrote them down, copied them, and then threw  
25 it away, and if I did that accurately, would that be different



1 from what I would be just be able to pull for free from the  
2 Internet?

3 A. You can retrieve past NOAA forecasts from their site.

4 Q. Okay. All right.

5 RE CROSS-EXAMINATION

6 BY MR. BOYAJIAN:

7 Q. You're aware that weather forecasting is a critical issue  
8 in the case?

9 A. Yes, I do.

10 Q. And you were asked to answer certain questions that we've  
11 already talked about aren't exactly tied to the restrictions and  
12 the timelines at play in this case, right?

13 A. Could you rephrase that?

14 Q. Sure.

15 You were asked to look at gale-force and storm-force  
16 warnings, both of which are well over, in terms of wind force,  
17 the restrictions that were at play in this case?

18 A. I was, yes. The warnings, the gale storm warning was for  
19 the time when they were at Cape Flattery.

20 Q. Okay. No, I'm sorry, not for the time at Cape Flattery.

21 A. Up to Cape Flattery, yes.

22 Q. Again, you said you were specifically asked to look at the  
23 day they departed, not the day they approached Cape Flattery.

24 A. Yes, so it was the 16th and the 17th.

25 Q. Correct, and they didn't get to Cape Flattery until the

1 afternoon sometime on the 18th.

2 A. Correct.

3 Q. If these NOAA forecasts were so easy to pull, why don't any  
4 of them appear in your report and analysis?

5 A. I have extracts. The forecasts are very long, so I  
6 extracted portions of the forecasts into my report.

7 Q. Okay. In your report, when discussing what was available  
8 to the *Ocean Ranger* on the 16th and 17th, you do not reference a  
9 single NOAA forecast that would have been available to the *Ocean*  
10 *Ranger*.

11 A. Not in the report directly.

12 Q. Okay. Where -- how indirectly?

13 A. I reviewed them, and I found no reference to gale or storm  
14 force winds predicted when the vessel would be coming around  
15 Cape Flattery.

16 Q. Well, again --

17 A. -- prior to them reaching it.

18 Q. Okay. So for the 16th and 17th?

19 A. Yes.

20 Q. Fully a day before.

21 A. From what I remember, they left on the 17th.

22 Q. Fair.

23 Do you recall, having reviewed all of those forecasts -- do  
24 you recall, having reviewed those forecasts, that there were  
25 forecasted winds in excess of 21 knots?

1 A. Yes.

2 Q. Do you recall that Captain Shaw's restriction was 21 knots  
3 or less?

4 A. Yes, I do.

5 MR. BOYAJIAN: Okay.

6 MR. SIMMS: No questions, Your Honor.

7 THE COURT: Mr. Pickhardt, thank you. You may step  
8 down.

9 Counsel, we'll go ahead and take our break for 15 minutes.

10 (Court in recess 2:41 p.m. to 2:59 p.m.)

11 THE COURT: Please come forward to be sworn.

12 BOB SHREWSBURY,  
13 having been first duly sworn, testified as follows:

14 THE CLERK: Please state your name for the record, and  
15 spell your last name for the court reporter.

16 THE WITNESS: Bob Shrewsbury, President of Western  
17 Towboat.

18 THE CLERK: And spell your last name, please.

19 THE WITNESS: S-h-r-e-w-s-b-u-r-y, and I'm the Second.

20 THE COURT: Mr. Shrewsbury, good afternoon. You don't  
21 need to get so close to the mike. The court reporter has a  
22 headset on, and it's connected to the mike.

23 THE WITNESS: I wear hearing aids. I was worried  
24 about being close to a speaker.

25 THE COURT: If you don't understand a question, just

1 say so, and we'll get them explain it further. Hopefully that  
2 will help.

3 Counsel, you may inquire.

4 DIRECT EXAMINATION

5 BY MR. SIMMS:

6 Q. Mr. Shrewsbury, you said you were the Second.

7 Tell us about Western Towboat and a bit of the history and  
8 what Western Towboat does.

9 A. Western Towboat, my dad started it in 1948, with one small,  
10 wooden tugboat, and we've continued to grow over the years and  
11 expand our services. We started building our own steel tugs in  
12 1982, and we still do that, build our own vessels.

13 And we started a freight company with a couple of partners  
14 in '78, '79, and then we ended up selling that business to  
15 Lynden Transport, who changed the name to Alaska Marine Lines,  
16 and we've continued to grow along with Alaska Marine Lines. We  
17 service all of Southeast Alaska, and we twice weekly service by  
18 barge, we serve Alaska Railroad once a week with barges, or more  
19 if needed, and we serve all over Western Alaska, seasonally, as  
20 well, and we do local work in Puget Sound, and harbor work, and  
21 we take odd towing jobs all over, as far east as New Jersey, and  
22 we've been to Guantanamo, we've been to Chile, Guam, Hawaii. We  
23 do a few oddball jobs like that as well.

24 Q. And is Russ Shrewsbury your son?

25 A. Yes, he is one of my sons. His younger brother, Ross, is

1 also a captain and works for us, and my daughter manages our  
2 office. It's definitely a family business.

3 Q. Tell the court about your personal experience. We've  
4 designated as you an expert in ocean towing. Tell us about  
5 that. What experience do you have?

6 A. I've never done anything else. I started riding locally  
7 with my dad, even when I was five years old. I made my first  
8 trip to Alaska when I was seven. I graduated high school in  
9 '71, and I went directly to running tugboats, and I did that,  
10 ran tugboats till and even after my dad retired in '89. I did a  
11 lot of Alaska work and some coastwise work, but mainly Alaska  
12 for me, and working with Alaska Marine Lines in the freight  
13 business.

14 Q. And do you still hold a master's license?

15 A. No. It expired a year and a half ago, I think. It doesn't  
16 mean I don't do some harbor work, but we won't tell anybody  
17 that. I'm almost 68 now, so...

18 Q. Have you made any tows up and down the West Coast?

19 A. Yes. Yes. I've been to San Diego and Los Angeles and Coos  
20 Bay, Portland, San Francisco. But it's been quite a while. The  
21 last time I was down the coast was around '91, or somewhere in  
22 there.

23 I spent a lot of time working with Alaska Marine Lines and  
24 the freight business. That's our biggest customer and account,  
25 and we work real closely with the owners of Lynden.

1 Q. And so now you have the honor of being president.

2 A. For a little while, still, maybe.

3 Q. And all that goes with it.

4 What do you do on a day-to-day basis?

5 A. Oversee our yard operations and the tugs. I don't do the  
6 dispatching, typically. And I look over some of the bidding and  
7 things like that for the different jobs that we do. And, like I  
8 say, I do a lot with Alaska Marine Lines and Lynden. I work  
9 directly with them because I've known them for so long, and the  
10 relationships we have with all the managers and stuff. So most  
11 of my focus is with Alaska Marine Lines and maintaining our  
12 construction site and what we do in our yard there.

13 Q. And your son, Russ, is vice president?

14 A. Yes, right. He's dispatching and quoting most of these  
15 kinds of jobs now, and he still fills in and runs tugs  
16 occasionally, when he has to, in the harbor, and dealing with  
17 all the customers, too.

18 Q. Before -- let's go back before 2015 or, at least, before  
19 the tow contract here in August 2016. Let's go back before  
20 that.

21 Had Western ever moved the YFD 70 around?

22 A. Yes. We moved it at the terminal, you know, just locally  
23 there at the shipyard. I'd done that a couple of times myself.

24 Q. And so was Western somewhat familiar with the YFD 70?

25 A. Yeah. We knew the dock, yeah.

1 Q. And had you ever moved it in different pieces?

2 A. No, no.

3 Q. It was always one piece?

4 A. Always, yeah. That's the way it's been since I worked in  
5 the harbor there.

6 Q. How long is that?

7 A. A long time.

8 Q. It's always been in one piece --

9 A. As long as I've worked around it, Vigor and prior to that  
10 when it was Todd Shipyard, yes.

11 Q. And so we get into 2016, coming up into August, and do you  
12 remember walking around the 70, talking with Dan Keen about  
13 towing it?

14 A. Yeah, we were asked about towing it.

15 Q. All right.

16 And what did Dan ask, and what did you say?

17 A. I said I felt we could do it. I was concerned about it,  
18 due to its age, because I've been around a lot of World War II  
19 ex-military barges and things that are a little shaky and rusted  
20 out. We had one of them flipped up -- a small, Navy barge that  
21 one of our customers owned turned upside down on us with a load  
22 of gravel on it.

23 Yeah, we felt comfortable, if we could do it at the right  
24 time of the year and in decent conditions.

25 Q. So at that time, in August, you were talking with Dan about

1 a tow when?

2 A. Late September was what we were all hoping for, prior to  
3 getting too deep into the fall.

4 Q. And so did Dan ask for a quote -- a tow quote?

5 A. Yeah, I believe either Dan or Paul Torrey. I don't know  
6 who asked for it. I know we sent it to Paul, I believe.

7 Q. And I'll put up Western Exhibit 4, and this is the towage  
8 agreement. And is this Western's standard towage agreement?

9 A. Yeah, that Bauer Monihan attorneys provide for us, yes.

10 Q. So Western sent this to Vigor -- and let me go to the  
11 bottom here. And here's your -- that's your signature?

12 A. Yes.

13 Q. And Paul Torrey's.

14 And did Vigor make any changes to this agreement?

15 A. Our attorney had pointed something out. They did the  
16 additional conditions. We didn't do that. There was --

17 Q. Well, let's -- yeah, before we pass that.

18 So they did additional conditions. "The tow is dependent  
19 on favorable weather conditions. In event that the weather  
20 conditions do not allow the tow to commence by November 26th,  
21 2016, either party may reschedule."

22 So did this require the tow to commence by October 7, 2016,  
23 if there were favorable conditions.

24 A. Yeah.

25 Q. Okay.



1 And so if there are favorable conditions before November 7,  
2 2016, your understanding was you got to go, right?

3 A. Yeah, that's what people were thinking.

4 MR. HOWARD: Objection; leading.

5 MR. SIMMS: I'll be careful.

6 THE COURT: Thank you.

7 Q. (By Mr. Simms) All right. So it's August -- sorry --  
8 October 4th, 2016, and you -- here's the contract. It comes  
9 back. And I want to go down here, and I'll blow it up a little  
10 bit.

11 Down at the bottom, this paragraph, "Customer." Is that  
12 Vigor, customer in the contract?

13 A. Yes.

14 Q. Okay.

15 And here it is, October 4, 2016, and the line is, "And it,"  
16 Vigor, "has informed owner," Western, "of any special  
17 circumstances or conditions applicable to the tow, which may  
18 affect the performance of services under this agreement."

19 All right. Did Vigor, Paul Torrey, anybody else, inform  
20 Western of any special circumstances or conditions applicable to  
21 the tow?

22 A. No, no one did.

23 Q. Okay.

24 And so would you consider the fact that the tow -- that  
25 Vigor sold the dry dock for \$10,000 to be a special

1 circumstance?

2 A. To me, it would. It seemed odd, yes.

3 Q. And why did it seem odd?

4 A. Well, I just never heard of anything being sold that cheap  
5 before with that much tonnage. When you look at the --

6 Q. Are you aware that in the sale contract, the sale contract  
7 was secret and confidential between Vigor and Amaya Curiel?

8 MR. HOWARD: Objection; both leading and irrelevant.

9 THE COURT: Sustained.

10 MR. SIMMS: Okay.

11 Q. (By Mr. Simms) So \$10,000, that was a special  
12 circumstance?

13 Were you aware, at the time of the circumstance, that Vigor  
14 intended to, before proposing this tow, transport the YFD 70 on  
15 a heavy-lift ship in three pieces. Were you aware of that?

16 A. We were aware of that because we helped put another one of  
17 their dry docks on a heavy-lift ship, and we went through  
18 several meetings with them about how to do that and the pilots.  
19 So, yes, we had heard that that's what they were hoping to do.

20 Q. Were you aware, at the time of this contract, that the  
21 original design of the 70 was for an open-ocean tow, for the two  
22 sections at the end to be loaded on the middle? Were you aware  
23 of that?

24 A. No, I was not. I was aware these dry docks were built to  
25 tow in the ocean, but not -- not -- I had not heard about ends

1 being removed.

2 Q. Would you consider that to be a special circumstance,  
3 knowing the original design?

4 A. Yes, I would.

5 Q. Okay.

6 And had you known, at this time, about that ultrasonic  
7 survey that had been done on the 70 several years before?

8 A. No, we did not.

9 Q. Okay. And would you consider that a special circumstance?

10 A. Yeah, that would have been nice to know, due to the age of  
11 that dry dock, yes.

12 Q. All right. And was it a special circumstance to know that  
13 the dock, at least at that ultrasound survey, had some  
14 significant deficits that, Dan you've heard testify -- needed to  
15 be repaired?

16 MR. HOWARD: Objection; both mischaracterizing and  
17 leading.

18 THE COURT: Sustained.

19 A. Yes, I would --

20 THE COURT: Mr. Shrewsbury, wait for the next  
21 question.

22 Q. (By Mr. Simms) So would you consider it a special  
23 circumstance to have known of the ultrasonic survey?

24 A. Only if there were some issues in that that were dangerous  
25 for towing in the ocean, yes.

1 Q. Okay. All right.

2 So the contract comes back around October 4, and then what  
3 was your next involvement with the 70 tow after you got the  
4 contract back from Vigor?

5 A. Coordinating between Dan and Paul Torrey on the departure  
6 times. We emailed back and forth and talked a little bit about  
7 our tug being available and when the dry dock could -- we were  
8 hoping to move the dry dock very early in October, and -- and  
9 then that's what we continued to discuss, that. And then it got  
10 pushed back a ways, so we weren't excited about that, but, with  
11 the right weather, we were still hoping we could do it.

12 Q. Did Vigor want you to move the dock out as soon as that  
13 could be done?

14 A. It sounded like we were okay if we hadn't left on the day  
15 we did, but sooner was better for them, is what we were told.

16 Q. Uh-huh. But you had to leave by November 7, if favorable  
17 weather?

18 MR. HOWARD: Objection; leading; mischaracterizes.

19 THE COURT: Sustained.

20 MR. SIMMS: Okay.

21 Q. (By Mr. Simms) So did Jeff Slesinger have any role in the  
22 preparation for departure with the tow?

23 A. Yeah. He provided a tow plan that -- Vigor asked us to  
24 submit a tow plan with the Coast Guard so that we could get this  
25 tow approved, because the vessel was not a classed vessel for

1 the American Bureau of Shipping or anything like that, so it has  
2 to have a Coast Guard permit to be towed in the open ocean like  
3 that. So he was working with -- he provided that, and I believe  
4 they got in contact with Mr. Shaw, and he talked with him about  
5 the dry dock. And I think he -- I don't remember if he went  
6 down himself and looked at it personally, but I thought he did.

7 Q. All right.

8 And at some point, Richard Shaw became involved. Did you  
9 have ever any discussions with Richard Shaw about the 70?

10 A. No. I never spoke to him.

11 Q. Did you ever receive -- I'm putting up Exhibit -- this is  
12 Vigor Exhibit 3.

13 Did you ever receive from Richard Shaw, or anybody else,  
14 this draft survey?

15 A. No, I was never sent that.

16 Q. Okay. All right.

17 And did you ever receive from Richard Shaw, or anybody  
18 else, this final survey, October 18, 2016?

19 A. No, I was never sent that, either.

20 Q. Okay.

21 And in your professional experience, have you ever -- have  
22 you ever received a trip-and-tow-suitability survey, ever seen  
23 one?

24 Let me ask it this way: Have you ever been involved with a  
25 tow where there was a surveyor for the tow?

1 A. Yes, yes, I have.

2 Q. And in your experience, is it customary for the surveyor to  
3 discuss his or her survey with the tow company before departure?

4 A. Yes, yes.

5 Q. Is the customary procedure to discuss the survey and to  
6 have the master initial it?

7 A. Yeah. Typically, that's normal, yes.

8 Q. And was that done here?

9 A. No.

10 Q. So -- okay.

11 So there is -- and is Russ working to prepare -- is Russ  
12 working with Vigor at this point to --

13 A. Well, Russ -- yes, he worked with Vigor on scheduling moves  
14 and things like that. Jeff Slesinger, in our office, I believe,  
15 is the only person that had any contact with Mr. Shaw.

16 Q. Okay.

17 A. And that's kind of what his job is, too.

18 Q. Okay. So we are now walking ahead and we get into October,  
19 and it's not quite -- why didn't the tow leave earlier than when  
20 it did?

21 A. Vigor was notified by the people in Ensenada that they had  
22 a delay in finding a moorage spot in Ensenada for the dry dock,  
23 so they wanted the arrival of the dry dock postponed, so that  
24 pushed it out at least another week or so there, or more.

25 Q. So we're coming up to the weekend of the 14th, 15th, 16th,

1 and Rich Courtney's name has come up a lot here, including in  
2 the tow plan. What do you remember about Rich Courtney's  
3 involvement with the tow?

4 A. Dan Kelly, in our office, had emailed him that we were  
5 going to be doing this tow. And then I had spoke to him, I  
6 believe, a couple days before we sailed, about what he saw in  
7 the forecast. I was looking at the extended forecast and a  
8 couple other things online, and I just wanted his opinion of  
9 what he was seeing. And then told him if anything changed,  
10 that, you know, and we agreed that it looked okay at that time,  
11 and if anything changed, we would contact him.

12 Q. Did you tell Rich Courtney about a 15-foot restriction?

13 A. That's what I knew at the time, yes.

14 Q. And where did that come from?

15 A. That was on our document that Jeff had provided, our voyage  
16 plan that he submitted to the Coast Guard.

17 Q. And that was, ideally, 15 feet?

18 A. Fifteen feet, yeah, for swell conditions.

19 Q. And did you speak with Rich Courtney?

20 A. Yes, yes.

21 Q. How many times?

22 A. Just that one time.

23 Q. Okay.

24 A. I think.

25 Q. And there are some emails about that. Do those emails

1 accurately record the conversation?

2 A. Yeah, yeah.

3 Q. Okay.

4 So what did you understand from Rich Courtney  
5 conversations, emails, about the departure date of the 17th?

6 A. Yeah, he was looking ahead and giving me his outlook on the  
7 next seven days, or as best as he could guess. And for us, it  
8 looked like it made the most sense to get going that day. And  
9 our thought was that if we got out in the straits and things  
10 deteriorated in the forecast, that we could wait out there. But  
11 due to the way the forecast looked, it was -- it looked better  
12 for us to go and deal with the end of that low-pressure thing,  
13 because behind it, we had a good four or five days of good  
14 weather, which would get us further south, out of Oregon and  
15 Washington, down to where we expected better weather in  
16 California. So we didn't want to waste that opportunity that  
17 was there.

18 Q. Uh-huh. Okay.

19 And so did the weather conditions on November 17th, that  
20 Monday, permit Western to commence the tow?

21 A. Yes.

22 Q. So the tow commences, and we've heard about Cape Flattery  
23 and weather and those sorts of things. Why didn't Western --  
24 you -- why didn't you have any more contact with Rich Courtney  
25 about this tow after that conversation over the weekend?



1 A. Because everything looked so good forecast-wise, and, yeah,  
2 we ran the next, I think, five -- five days or six days, and  
3 even then the forecasts still were favorable for us.

4 Q. Were you looking at the weather?

5 A. Oh, yeah.

6 Q. So what were you looking at?

7 A. I look at the NOAA forecasts. I get it online, and the  
8 Windy program, yeah. And so -- because we were concerned,  
9 definitely concerned about this dry dock.

10 Q. Now, the NOAA forecast, looking at the Windy program, and  
11 in your professional experience, is that what mariners consult  
12 to determine weather?

13 A. Yeah. When we're traveling down the U.S. coast, yeah, we  
14 trust NOAA for that. You know, when we've done some trips out  
15 our NOAA area, we've hired a private company -- we did some  
16 container cranes on our barges from Los Angeles to Florida in  
17 kind of a critical time of year, and we hired a special company  
18 like what Rich Courtney does to watch weather for us.

19 But on the Washington, Oregon, and California coast, we're  
20 pretty confident in the NOAA forecasting.

21 Q. In your experience as both when you were sailing and as a  
22 manager, are the NOAA forecasts reliable?

23 A. Yeah -- yes. Yeah, we live by them; I mean, we do.

24 Q. Do you need an extra forecaster to fill you in on what the  
25 forecasts are?

1 A. It's nice in Alaska, the critical Gulf of Alaska. We have  
2 our rail barges that go every week. We have kind of the --  
3 found out that a 16-foot swell is about what the railcar  
4 lashings cannot take. So we try to be really critical of that.

5 So sometimes between two areas there, it's a little  
6 confusing, and that's generally when we'll call Rich for an  
7 opinion on what we should expect, and -- because it's not -- you  
8 know, for us it's a 270-mile trip from inside Cape Spencer to  
9 the next safe spot over there behind Cape Saint Elias. So that  
10 expert opinion really helps sometimes. He's saved us a few  
11 times from making the wrong decision. We just like to verify  
12 what we're thinking.

13 Q. Did Rich have any particular geographical area that he was  
14 most familiar with?

15 A. Well, Alaska and the West Coast. But Alaska is where he is  
16 based out of, Yakutat.

17 Q. Did you expect him to have specific expertise for the West  
18 Coast of the U.S.?

19 A. I did, yes.

20 Q. So he was available.

21 A. Yes.

22 Q. And so the tug and tow go out, and now we're up to the  
23 25th.

24 What do you remember of the first report you got -- well,  
25 let me go before that.

1 Did you get any reports from the tug and tow about problems  
2 with the tug and tow before the afternoon, around 2:00 or so?

3 A. No. Everybody was pretty happy with the way things were  
4 going, and the tug...

5 Q. Now, how did you communicate with the tug?

6 A. With phone service, when we could. I didn't talk to  
7 them -- only once, I believe, but everything -- emails, so...

8 Q. And so then in the afternoon of Tuesday, the 25th, did you  
9 get -- were you the one who call about the list?

10 A. Yes, I got the call.

11 Q. Who called you from the tug?

12 A. Captain Steve McGavock.

13 Q. Okay. What did he tell you?

14 A. He said there was a slight list of maybe four degrees, and  
15 just what everybody thought. And we asked them if they could  
16 send us some pictures that we could forward to Dan Keen.

17 Q. Okay. Yeah.

18 And so did you send those pictures to Dan Keen?

19 A. Yeah. I think we had -- one or two shots that we had, yes.

20 Q. All right. So now it's about the two -- two -- four  
21 o'clock in the afternoon. Did you speak with Dan Keen?

22 A. I believe I did, yeah. And I emailed Paul Torrey, too, as  
23 well, and the exact -- who I talked to first.

24 Q. Did you ask Dan or Paul to do anything?

25 A. Well, yeah. We were -- we wanted to know what Dan was

1 thinking when he saw the pictures, yeah.

2 Q. Well, why did you ask Dan?

3 A. Well, because he was the dockmaster and he's the most  
4 familiar with the dock. He'd been running the dock, and he knew  
5 it better than anyone.

6 Q. Okay. Well, why didn't you just rely on Steve looking at  
7 the dock himself?

8 In your experience as a professional mariner, when you're  
9 looking at a tow, can you tell what's going on with the tow? A  
10 little bit?

11 A. If it's a barge you know, yeah, you can tell, but we're not  
12 familiar with the inside structure of the dry dock like that.  
13 And I know Dan is totally familiar with it. He has to know  
14 exactly how to raise it, lower, and it which tanks or, you  
15 know -- I don't know how things were connected or disconnected  
16 inside or anything. We wanted to know if it was still safe, or  
17 if we needed to look for a place of safety, or what they  
18 thought.

19 Q. Okay. And did you trust what Dan told you?

20 A. Yes.

21 Q. And what did Dan tell you?

22 A. He said, from what he could tell, it looked like it was  
23 probably okay. But then I think we decided that it was best if  
24 we could get it somewhere to get some people on it and try and  
25 secure whatever was leaking.

1 Q. Okay. So we're going to get -- we're going to go back and  
2 forth about this a lot, and you'll see, I'm sure, your  
3 deposition transcript that said it was your sole decision to go  
4 to San Francisco and to Monterey. Was it?

5 A. No, no. I thought we discussed the options that we had  
6 about going to San Francisco, and that was our first decision,  
7 that if it was okay, that we could go in there.

8 Q. Uh-huh.

9 A. But the more I thought about it, and the age of the dry  
10 dock, I got worried about San Francisco. And then I told them  
11 that I was. I either called them or I emailed them and told  
12 them that we needed to talk about another option. And we also  
13 talked to the Coast Guard about that we were having an issue and  
14 what we were thinking, and then we changed our thinking to  
15 Monterey.

16 Q. Were you talking to the Coast Guard?

17 A. I believe I did call them and started the conversation,  
18 yes.

19 Q. All right.

20 And then you gave them Paul Torrey's number?

21 A. I believe that's how it worked, yeah.

22 Q. Okay.

23 And at that point, when you called the Coast Guard, is  
24 there anything that indicates to you that they had no idea where  
25 you were?

1 A. I don't remember.

2 Q. Okay.

3 So just to your left there, there there's the chart. And  
4 what were your concerns about coming into San Francisco?

5 A. I was just worried if anything was more serious on the dry  
6 dock, and we couldn't get in there safely, that if I ever sunk  
7 in that waterway, becoming as busy as it is, and there is a bar  
8 there, which is shallow, and as high as the sides are on that  
9 dry dock, that if it sunk there, it would be a national disaster  
10 for the shipping industry, if it went down in the wrong place,  
11 and that's why thought we needed to rethink that.

12 Q. We've talked about San Francisco and Monterey.

13 Did you have any idea that Vigor was prepared to meet the  
14 tug and tow at San Francisco with Global Diving?

15 A. Yeah, we discussed that, but we also -- but after I went  
16 back to them with my thoughts on San Francisco, I believe they  
17 agreed to that, too, and everybody decided that we would not go  
18 there. We would look for a lee in Monterey Bay, if the Coast  
19 Guard approved of that idea. And we knew some people who could  
20 get equipment out to the dry dock, if it was approved and the  
21 weather allowed us to get in there and find a lee.

22 Q. Was there ever any consideration to simply head off with  
23 the tow into the deepest water possible and sink it?

24 A. Well, later that night, yes.

25 Q. But at this time?

1 A. Not at that time, no.

2 Q. Had Dan Keen told you that, more likely than not, it would  
3 float at this time?

4 A. Yeah. He felt it was probably going to be okay from what  
5 he saw there and from what he could tell in that photograph.

6 Q. Did Western have any responsibility to try to come to the  
7 assistance of the tow?

8 A. Not in the sea conditions we had. Because of the way the  
9 dry dock is --

10 Q. And I'm not talking about going around with a tug and  
11 getting on it. I'm talking about assistance from the standpoint  
12 of saving the tow, if possible. Was there any idea that that  
13 was something Western was supposed to do?

14 A. Yes, yes, I mean, that's why they hire us; to get it down  
15 there safely, and if we can save it and if it's something simple  
16 and it was just one or two compartments that had a fracture or  
17 something that we could deal with, then, you know, maybe it  
18 would be fine.

19 Q. Was the plan to put on a patch or something like that?

20 MR. HOWARD: Objection; leading. I'm trying not to  
21 object too often to leading.

22 THE COURT: It is. Sustained. Rephrase.

23 Q. (By Mr. Simms) Were there any plans -- tell us of the  
24 plans, if any, to assist the dock.

25 A. They had Global Diving lined up, and I think the first plan

1 was just to see what the damage was.

2 Q. And just to see, was that --

3 A. Yeah.

4 Q. When was that to take place?

5 A. After daylight the next day, then if it was safe to come  
6 in, then we would come in.

7 Q. Uh-huh. Okay.

8 So was the plan, on Tuesday evening, to have Vigor meet the  
9 dock the next day to see what the damage was?

10 A. Yeah. We would keep in contact with them, and we would  
11 continue to head down the coast so we were closer to Monterey  
12 Bay, and then we could decide to come in.

13 Q. All right.

14 And now, of course, there's the captain and the mates on  
15 the tug, they can see this. Why was it necessary for Vigor to  
16 meet the tug and tow anywhere?

17 A. Well, we just didn't know if it was going to continue to  
18 get worse.

19 Q. All right. So Vigor wanted to meet. Did Vigor want to  
20 meet and see --

21 A. Yeah. Well, they wanted to save their dry dock. They made  
22 a deal to sell it and -- yeah.

23 Q. Was Western trying to assist in saving the dry dock?

24 A. Yes, yes, that was our goal, too.

25 Q. Okay. So we get into the evening. What else do you



1 remember about that evening?

2 A. Well, what happened was it got dark, and also the weather  
3 conditions changed. It got foggy, and our guys couldn't see the  
4 tow. Because we still had to have most of our tow wire out, so  
5 we couldn't tell what was happening with the dry dock, and  
6 that's what was making us nervous; that if all of a sudden it  
7 filled up and started to sink and we couldn't tell, it could --  
8 if the boat could not get back and release the brake or  
9 something, if it sunk that fast, it would pull the boat  
10 backwards, and we've got five people on there. It was pretty  
11 nerve racking for everybody not knowing what will happen with  
12 that dry dock.

13 Q. Uh-huh.

14 So we get into evening -- early morning, and how often were  
15 you communicating with the tug?

16 A. We told them if they saw anything, or when they could see,  
17 let us know what it looked like, because if it changes for the  
18 worse, then we need to make another plan.

19 Q. All right.

20 A. And that...

21 Q. Now, so let's talk about the decision to head to deep  
22 water. All right? Tell the court everything that went into the  
23 decision.

24 MR. HOWARD: Your Honor, I believe this is a topic the  
25 court has said it already resolved and decided not relevant.

1 I'll object to the topic.

2 THE COURT: There's still the issue of the contract  
3 and either side abiding by the conditions of the contract. If  
4 that affects this in any way -- we're not going to get into  
5 staying out the sanctuary?

6 MR. SIMMS: No.

7 THE COURT: Okay. Overruled.

8 MR. HOWARD: Thank you, Your Honor.

9 Q. (By Mr. Simms) So tell the court about that.

10 A. I told the tug crew to call me when they can see the dry  
11 dock, if anything gets worse. And I got a call late that night,  
12 and Steve said, yeah, it's taking on much more -- you could see  
13 it now. And I said, Well, head to as deep of water as you can,  
14 get as far out there as you can.

15 Q. And did you get an email from Dan Keen that says, "Agree.  
16 Head to deep water"? At 6:37 p.m., is that an email you got  
17 from Dan?

18 A. Yeah.

19 Q. Okay. And then this is Dan -- do you remember getting that  
20 from Dan?

21 A. Yeah, yeah, I believe that was sent to me as well.

22 Q. Okay.

23 And then we -- 9:43, 10:00 p.m., looks like from you to  
24 *Ocean Ranger*, and we heard John Cowgill saying he saw this. So  
25 is this you sending that to the *Ocean Ranger* at 10:00 p.m.?

1 See?

2 A. I'm -- yeah, from home there.

3 Q. Yeah, you're at home?

4 A. Yeah.

5 Q. And you forward Dan's message?

6 A. Yeah.

7 Q. With the diagram. It's 10:00 p.m. So that gets to the  
8 tug. And then here, 3:13 a.m. When did you turn in that  
9 evening?

10 A. Yeah, I guess I must have sent it at that time, right, 3:00  
11 in the morning?

12 Q. The email is 3:13. Whether or not you were awake to get  
13 it, who knows. But it was probably morning?

14 A. Yeah. I see, yes.

15 Q. Okay. So after you had this discussion with Steve about  
16 heading to deep water, did you get any more reports from the  
17 tug's view?

18 A. I thought he called me, actually, when it did sink. And I  
19 don't think I sent Dan anything in the middle of the night.

20 Q. Uh-huh. Okay. All right.

21 And throughout all of this, in your dealing with Dan,  
22 emails and that sort of thing, did you ever get any indication  
23 from Vigor that the dock was going to sink?

24 A. No.

25 Q. Did you ever get any indication from Vigor that they were

1 going to do anything else but see you in the morning?

2 A. No, I don't think there was anything else that I was  
3 expecting.

4 MR. SIMMS: Okay. No notes coming my direction, so  
5 I'll turn you over to Vigor.

6 THE WITNESS: Okay.

7 CROSS-EXAMINATION

8 BY MR. HOWARD:

9 Q. Good afternoon, Mr. Shrewsbury. Can you hear me okay?

10 A. Yes.

11 Q. I understand you're hard of hearing --

12 A. Yep.

13 Q. -- so tell me any time if I speak too quickly or softly.

14 A. Okay.

15 Q. I'm Christopher Howard. We have not met. I may be asking  
16 you questions, occasionally, from your deposition that  
17 Mr. Boyajian, my partner to my left, took. Do you recall him?

18 A. Yes.

19 Q. Starting at the beginning for this transaction, for the  
20 contract, you wrote the contract for this case, correct?

21 A. No. I'm not an attorney. I did not write the contract.

22 Q. You took a form that you had your attorneys create, and you  
23 put that into it?

24 A. That was one of our standard contracts that they'd produced  
25 that we've used with a couple other customers.

1 Q. So clarify. Did you actually send this contract, this  
2 particular one with Vigor, off to your attorneys to draft, or  
3 did you use your attorneys' form?

4 A. No. We used their form.

5 Q. Were there attorneys involved in negotiating this contract  
6 with Vigor, or just the parties?

7 A. No, not that I remember.

8 Q. And you were familiar with the YFD 70 from personally --  
9 you personally had moved it around and moved boats in and out of  
10 it?

11 A. Yes.

12 Q. You've known that dry dock for years, if not decades,  
13 right?

14 A. Well, for a while, yes.

15 Q. And would it be accurate to say that the port is a small  
16 place, a small neighborhood; you know what's going on there?

17 A. Yeah.

18 Q. So you've seen Vigor --

19 A. Yeah.

20 Q. -- do their work on it, fix it up, and maintain it?

21 A. Yeah.

22 Q. And you knew they kept it up and used it?

23 A. I knew they used it, yes.

24 Q. They used it for Navy ships for many years?

25 A. Yes.

1 Q. But this is the first time -- well, other than towing it in  
2 the harbor, this is the first time Western had tried towing it  
3 on a coastal or out in the ocean, correct?

4 A. Yes.

5 Q. Now, despite that, you didn't ask for a survey of the  
6 vessel -- Western didn't ask for a survey, did it?

7 A. No. We were told they were doing one.

8 Q. And while we're on the contract, we're on the topic of  
9 special -- did you express, by the way, to Vigor that you had  
10 concerns about the condition of the dry dock?

11 A. Not -- I don't know that I spoke to anybody about that  
12 personally.

13 Q. Did you have concerns about the dry dock while you were  
14 negotiating this?

15 A. Yeah.

16 Q. And you didn't ask for a survey, and you didn't --

17 A. Well, no, I knew they were getting a survey. I was told  
18 they were getting a survey, and Jeff Slesinger knew surveyor, of  
19 him, and I knew about it.

20 Q. And that survey was important to Western, that it was being  
21 done, right?

22 A. Yes.

23 Q. And the right person to get it at Western was Jeff  
24 Slesinger?

25 A. Yeah.

1 Q. Is one of Jeff Slesinger's titles -- more than one job  
2 title -- port captain for your company?

3 A. Yes.

4 Q. So the port captain is the guy in your company who would be  
5 getting the survey, and then pass it along to whoever needed it  
6 at Western, right?

7 A. Typically, yes.

8 Q. And you would expect Jeff Slesinger, once he gets it, to  
9 incorporate the special considerations noted in that survey,  
10 that report, into your tow plan, wouldn't you?

11 A. Yeah.

12 Q. And now when we're on the topic of special considerations,  
13 you would expect the information contained in that survey and  
14 the recommendations to be the type of special considerations  
15 that Vigor would report to Western before undertaking this,  
16 right?

17 A. Say that again, please.

18 Q. Yeah. Okay.

19 There is a provision in the contract about special  
20 considerations.

21 A. Yes.

22 Q. And, in fact, your special considerations, in your mind,  
23 would relate to the condition of the dry dock, right?

24 A. That would be --

25 MR. SIMMS: Your Honor, I object. This is

1 misconstruing the contract at the time of the contract. It  
2 says, "We have informed." It's the point at which special  
3 considerations are considered is at the time of the contract,  
4 not what they decide to tell later. So that has to be made  
5 clear.

6 THE COURT: The objection, if there is one, will be  
7 overruled. All I want to know is what the witness knew and  
8 understood about that contract.

9 Next question, please.

10 MR. HOWARD: Okay. I don't know that that one was  
11 answered. Could I have the court reporter read it back, since  
12 it was overruled?

13 THE COURT: The question was: "There is a provision  
14 in the contract about special considerations. And, in fact,  
15 your special considerations, in your mind, would relate to the  
16 condition of the dry dock, right?"

17 A. That would be one factor.

18 Q. (By Mr. Howard) In fact, do you recall when Mr. Boyajian  
19 took your deposition on St. Patrick's Day of this year, March  
20 17th -- good of you to give up that day. Do you recall that  
21 day?

22 A. Yes.

23 Q. And were you under oath that day?

24 A. I don't know. Was I?

25 Q. Well, I believe the court reporter swore you in that day.



1 A. Okay.

2 Q. Were you trying to give truthful answers that day?

3 A. Yeah, yes, yes.

4 Q. And I believe in front of you is a heavily highlighted copy  
5 of page 25 of your deposition from that day.

6 And do you recall, regarding special consideration,  
7 Mr. Boyajian asking you if there's something you need to know  
8 about how to tow it to do it safely. "Is that what this is  
9 telling you?" Question.

10 And you answered: "Yes, partially. And then there's some  
11 condition of that dock that we need to know about, that it may  
12 have leaks or something, that we wouldn't be able to see by  
13 looking at it ourselves. So I would assume" -- I'm just going  
14 to read one more question and answer.

15 "Okay. Would this include when they tell you about weather  
16 restrictions, this dry dock can't be out in the seas greater  
17 than ten feet, is that a special circumstance applicable to this  
18 tow?"

19 And you said, "Yeah."

20 Was that correct?

21 A. Yes.

22 Q. And you still agree with that testimony you gave?

23 A. Yes.

24 Q. Okay.

25 So the restrictions contained in Captain Shaw's report

1 would be important type of special considerations, information  
2 that you were expecting to receive under the contract; would  
3 that be accurate for you?

4 A. Yes, that would be some of it.

5 Q. Were you expecting Vigor to give you a complete rundown of  
6 all the maintenance they had done on the dry dock for the last  
7 decades?

8 A. No.

9 Q. Okay.

10 Do you know what NAVSEA certification is?

11 A. No.

12 Q. Okay.

13 So do you know what standards that dry dock had been  
14 maintained to over the years prior to its being towed?

15 A. No.

16 Q. Okay. And would that not be your area anyway?

17 A. Well, I was not familiar with those -- that.

18 Q. I'm going to change topics because I want to get us done  
19 and you out of here today.

20 Mr. Courtney --

21 A. Yeah.

22 Q. -- you called Mr. Courtney a few days before this left,  
23 correct?

24 A. Yes.

25 Q. And, actually, let me do one more thing about the contract

1 relating to whether.

2 You understood, didn't you, that if you didn't get weather  
3 you liked or felt comfortable with in October, this could be put  
4 off till the spring, right?

5 A. Yes, that was in the contract.

6 Q. And you knew that?

7 A. Yes.

8 Q. You didn't have to leave in October?

9 A. Well, we didn't have to, but we knew they wanted to get it  
10 out of there.

11 Q. And you wanted to get the job done?

12 A. Yeah. We were trying to help them, yes.

13 Q. But if you were going to do it safely, you could do it  
14 safely later, rather than have to leave in October, right?

15 A. We possibly wouldn't have been able to do it in the spring.

16 Q. Was that "would" or "wouldn't"?

17 A. Would not have been able to, most likely.

18 Q. Would it be put off further, then, until it was safe?

19 MR. SIMMS: Objection, Your Honor. It's misconstruing  
20 the contract. The contract language is very clear. We've heard  
21 the witness testify that the conditions allowed the tow to  
22 commence before the deadline of November 6th, and the contract  
23 language is very clear. It's not to imply that this is an  
24 option. He 's not correct under the express terms of contract.

25 THE COURT: Mr. Howard?

1 MR. HOWARD: He's already testified that he knew he  
2 had an option of putting this off if he was not comfortable with  
3 the weather. He's the one who drafted the contract, and I'm  
4 asking him how far he thought he could be allowed to put it off  
5 to get clear weather, under the contract.

6 THE COURT: Mr. Shrewsbury, let me ask you -- I want  
7 to clarify this as well.

8 The contract is drafted and it has a specific date, must  
9 sail by this date. If the weather was bad, and that date came  
10 and went, then the contract wouldn't apply, correct?

11 THE WITNESS: Correct.

12 THE COURT: You would have no contract. You would  
13 have to start over again, right?

14 Mr. Howard, your next question.

15 MR. HOWARD: Actually, I would like to follow up on  
16 that.

17 Q. (By Mr. Howard) I've pulled up a portion of Exhibit 4.  
18 This is part of the contract that you drafted; is that correct?

19 A. No. This is -- Vigor put this in.

20 Q. But it was in the contract?

21 A. Yes. It was something they added.

22 Q. And you knew about this provision?

23 A. I guess, yeah. I signed it, so I must have known about it,  
24 yeah.

25 Q. And under this provision, does it not say that either party

1 may reschedule the tow, at no cost, to a more favorable date in  
2 2017?

3 A. Yes.

4 Q. Okay. And you signed the contract with this language in  
5 the contract?

6 A. Yeah.

7 Q. Okay. So either party was free to say, Let's put this off  
8 till next year?

9 MR. SIMMS: Objection. That's not what it says.  
10 That's not what it says. "In the event that the weather  
11 conditions do not allow the tow to commence." We have his  
12 testimony that said the weather conditions allowed the tow to  
13 commence.

14 THE COURT: I understand, and I can read the contract,  
15 and the court can interpret the contract for itself.

16 Mr. Howard, any other questions?

17 MR. HOWARD: I believe his understanding is important,  
18 and he's testified about that. Thank you, Your Honor.

19 Q. (By Mr. Howard) Now, when it came to calling Mr. Courtney,  
20 your recollection is you called him a couple of days before the  
21 trip left; is that correct?

22 A. Yes.

23 Q. And do you recall what wind conditions and sea states you  
24 were asking him about?

25 A. I was asking him about the extended forecast after that

1 predicted small-craft advisory they had up. What they thought  
2 for -- what he could see for the future.

3 Q. Okay.

4 A. I trusted him to know way better than what I could look at  
5 a weather map and tell. I just wanted to know if he felt it was  
6 going to be tell -- if we were going to get -- it was going to  
7 be a slow tow, we knew, and we had weather restrictions, and I  
8 wanted to make sure we had enough days to get far enough south  
9 to get out of the northern part in October, because lows come  
10 through. We just had one happen a few days before when we were  
11 originally thinking we were going to go, prior to the Mexicans  
12 postponing it. So we didn't want to be in one of those again.

13 Q. And you know the weather is usually better in California in  
14 October.

15 A. Yes.

16 Q. Would it be accurate paraphrasing of your memory that what  
17 you understood from Mr. Courtney was there are a bunch of  
18 low-pressure systems out there, and the first one was expected  
19 to pass to the north, and you might be able to get out before  
20 the other ones came in?

21 A. Yeah. He thought we had a pretty good stretch, and that  
22 proved to be the case for us. I mean, we almost made it to, you  
23 know, the -- well, we made it into Northern California when we  
24 got the worst weather.

25 Q. Now, there's been some discussion about an email exchange

1 between you and Mr. Courtney. Do you recall that?

2 A. Yeah.

3 Q. We have put up Exhibit A-66 --

4 A. Yeah.

5 Q. -- and the first question I have for you is: Who is Dan  
6 Kelley?

7 A. He's our operations, slash, personnel manager. He helps  
8 crew the boats and hire employees and schedule the crews on the  
9 tugs going where they go so they get the right people on the  
10 right boats.

11 Q. Now, when your port master goes on vacation -- as in when  
12 Mr. Slesinger goes on vacation -- would Mr. Kelley fill in for  
13 him?

14 A. Not on everything, no. We all do --

15 Q. On this occasion -- sorry. I did not mean to cut you off.

16 A. We all fill in.

17 Q. Who was filling in for Mr. Slesinger on this occasion when  
18 he left on October 14th to go get an airplane early on the 15th?

19 A. I think that was shared between Rich Christensen and  
20 myself, I guess.

21 Q. Did you direct that correspondence come to you that was  
22 being sent to Mr. Slesinger?

23 A. I just assumed Jeff would copy me on anything he got.

24 Q. But I believe you already testified you never got Captain  
25 Shaw's recommendations that were sent to Jeff, correct?

1 A. Yes, I did not get that.

2 Q. So I want to turn your attention to Exhibit 66, and in this  
3 exchange, do you see that Mr. Kelley is asking for a 12-foot  
4 head swell. Do you know where he got that?

5 A. I don't know. I'm assuming that Jeff possibly called him  
6 and talked to him, or -- and he misconstrued it or -- I don't  
7 know where that all came from. I'm assuming it came through  
8 Jeff, for him to contact Rich to update him on what we were  
9 doing.

10 Q. And on the next page, please. On the next page, do you get  
11 involved and correct that number, that 12-foot number?

12 A. Well, yeah, because I had 15.

13 Q. Right.

14 Now, to be clear, this is October 12th that you're  
15 saying -- you're using 15.

16 A. Yeah.

17 Q. Is 15-foot the limitation information you gave to the  
18 weather person with whom you were consulting?

19 A. Yeah. I sent this to him because that's what I had on our  
20 tow plan that the Coast Guard approved, and I had not -- nobody  
21 had forwarded me Mr. Shaw's.

22 Q. Okay.

23 A. Yeah.

24 Q. No one at Western had forwarded you Mr. Shaw's report?

25 A. Nobody at all. I never got a copy of it, that I'm aware



1 of.

2 Q. Now, I think you indicated the Coast Guard approval was  
3 necessary for the permit because of the nature of the tow,  
4 correct?

5 A. Yes.

6 Q. But you don't expect the Coast Guard to do any separate  
7 analysis of whether or not the weather is appropriate. You're  
8 not relying on them to do an analysis, are you?

9 A. Well, we put it in our tow plan, so we expected them, if  
10 they didn't think it was right, to correct that.

11 Q. If they had the information that Western had regarding what  
12 the surveyor had -- what Captain Shaw said, they might change  
13 it, for example?

14 A. Yeah --

15 MR. SIMMS: Objection; calls for speculation.

16 THE COURT: That will be sustained.

17 Q. (By Mr. Howard) I left up part of Exhibit 66, but the real  
18 question I want to ask from Exhibit 66 is: Did you ever contact  
19 Mr. Courtney and say, What about a ten-foot sea? I need to  
20 change your projection based upon a ten-foot sea.

21 A. No, I didn't, because I never talked to him again after  
22 that -- later that week, two or three days later. And I still  
23 hadn't been -- I never knew the ten-foot thing until the dry  
24 dock -- sometime after the dry dock passed.

25 Q. Okay. So whatever information you got from Mr. Courtney

1 was based upon him being asked to project weather for a 15-foot  
2 sea; is that correct?

3 A. Yeah, if -- yes, that would have been correct.

4 Q. Now, were you in on the decision of whether or not to go or  
5 not to go when they got to Cape Flattery?

6 A. Yeah. I believe I talked with Stephen out there on the  
7 boat, and we agreed that it was good to go, and if we -- if --  
8 if we found a change in the weather that wasn't acceptable, that  
9 we still had a chance to turn around there.

10 Q. Now, unfortunately, for some reason, you still had not seen  
11 Captain Shaw's reports or recommendations at that point; is that  
12 correct?

13 A. I had not, no.

14 Q. Okay.

15 But you would agree that if, at Cape Flattery, there were  
16 forecasts that exceeded the recommendations, and you had known  
17 that, you would have said, Don't go?

18 A. I would have needed -- I would need to see the direction of  
19 the weather. If it was an offshore's easterly, southeast,  
20 and -- you know, I wasn't worried about the wind speed as I was  
21 the swell, and it would have depended what that forecast showed  
22 for me to make a -- change the direction.

23 I was more worried about getting further down the coast  
24 prior to anything else developing.

25 Q. So you're saying it would have been a judgment call that

1 you and the captain would have made, even if you had forecasts  
2 that exceeded the restrictions placed on the tow at Cape  
3 Flattery?

4 A. Yeah. We were basing our numbers on the swell condition,  
5 and, obviously, we considered the wind in that, the wind and the  
6 direction, but to get five or ten knots of wind from the east,  
7 more than 25 knots isn't going to make -- you know, we  
8 understand that this is all about the swell and the swell in the  
9 ocean affecting the strength of that dry dock, and that was the  
10 critical part.

11 Q. And you knew that at the time?

12 A. Pardon me?

13 Q. You knew that at the time.

14 A. Yeah. I mean, that's -- we have tows where the wind is  
15 critical, where you're towing a container crane or something,  
16 and the thing is 120 feet off the deck, if you get too high a  
17 wind, it will blow you backwards.

18 But on this particular tow, we understood the swell  
19 condition was the key to this safety. And, unfortunately, I  
20 didn't know it got changed to ten feet. Originally -- when Jeff  
21 Slesinger talked to Mr. Shaw, it was originally -- he agreed on  
22 our tow plan, but I didn't know that they changed it.

23 Q. And if Jeff Slesinger had informed you of that and  
24 forwarded the recommendations, that might have changed some of  
25 your thinking in this matter?

1 A. It might have. On the weather we were looking at there, I  
2 doubt it would have, but --

3 Q. And is there a period of time, after you pass Cape  
4 Flattery, where you get a forecast of gale winds, you still have  
5 time to turn around?

6 A. Yes.

7 Q. How far is that?

8 A. It depends on how fast it's coming at you, how far down you  
9 go. For this tow, if we thought we were going to get over ten  
10 feet and we were more than, you know, 80 miles south of there or  
11 something, it probably wouldn't have made sense.

12 Q. So if you had a 35-mile-an-hour wind projection within an  
13 hour or two or three, or even five hours after passing Cape  
14 Flattery, would you have said, Let's turn around?

15 A. I would have to see the forecast. I can't say that.

16 Q. You would agree, wouldn't you, that you were concerned  
17 about that, but it hit a storm within one day, and the tow was  
18 fine, right?

19 A. No, it didn't hit a storm.

20 Q. It hit heavy seas that exceeded the restrictions within one  
21 day.

22 A. Yeah, they weren't gale-force winds. They were small-craft  
23 warnings, as I remember, and, you know, we had seas close to ten  
24 feet, eight feet or whatever, but it was, obviously, okay. The  
25 dry dock never changed after that for days.

1 Q. Now, when the list was first noticed, you were involved; is  
2 that correct?

3 A. Yes.

4 Q. Now, I want to go through this without getting into issues  
5 that relate to necessarily Western but the focus on what Vigor  
6 did.

7 Your counsel asked a question that compounded the decision  
8 for Monterey and San Francisco, and I want to break those up as  
9 a non-compound question.

10 You engaged a number of people in the discussion about  
11 possibly going to San Francisco to do repair work, right?

12 A. Yeah.

13 Q. But the decision to no-go San Francisco, this is too  
14 dangerous, that was your decision, wasn't it?

15 A. Yeah.

16 Q. And you told Vigor afterwards?

17 A. I called them and told them what I was thinking, as I  
18 remember, why we should change this idea.

19 Q. And it was a good idea to change it, wasn't it?

20 A. It turned out it was, yes.

21 Q. And like I say, that was your idea, you made the decision,  
22 you take ownership for that, right?

23 A. Yeah, I got it.

24 Q. And you weren't basing that on anything Dan told you about  
25 the condition of the dry dock, right?

1 A. Well, I was -- no. I was hoping Dan was right, but I was  
2 planning for the worst.

3 Q. Okay.

4 And did Dan ever get updated photos or further data beyond  
5 the one or two photos you sent early on?

6 A. None of us did because the fog set in.

7 Q. So no one ever told Dan about the increasing list, as far  
8 as you know?

9 A. No, because nobody knew that.

10 Q. Now, the decision, after leaving San Francisco, which was  
11 your decision, the decision to head out to go to Monterey was  
12 also your decision. You weren't relying on Vigor telling you to  
13 go to Monterey, were you?

14 A. Well, we were -- I was also going by what the Coast Guard  
15 had agreed.

16 Q. Okay.

17 But I'm, actually, focusing not on Western's decision, but  
18 Vigor wasn't involved in that decision, but they were informed  
19 of the decision. Would you agree with that?

20 A. To?

21 Q. To go to Monterey. It's like, Meet us in Monterey, not San  
22 Francisco.

23 A. No, I thought we all agreed on that, that it made the most  
24 sense. I don't remember if it was myself or Russ, but we told  
25 them of companies that could help us get people down there and

1 get to the tow, if we could arrive there.

2 Q. Once again, I'm going to ask you to take a look at your  
3 deposition.

4 A. Okay.

5 Q. A few months ago.

6 A. Yeah.

7 Q. At page 63 at line 3 -- actually, go back to page -- are  
8 you able to go to page 62? I'll have to ask the question on  
9 page 62, if I may, because we may not have a pre-page 62.

10 You were asked: "And what was that conversation, to the  
11 best you can recall it, understanding it was five years ago?"

12 And your answer -- oh, sorry. Actually, I have the wrong  
13 one here. Go to 68.

14 Starting at 67 -- at line 18 on 67, you were asked: "Is  
15 that one of the reasons that you decided it just makes no sense  
16 to go to San Francisco?"

17 And you said, "Yes."

18 "Who else was in on that decision?"

19 And you said, "Nobody."

20 "Just you coming from the top, you thought it over and  
21 decided" -- page 68, and you answered -- are we on 68 yet?

22 Ms. Ivie?

23 MS. IVIE: No, we're not.

24 MR. HOWARD: Okay.

25 And, Your Honor, I'm almost done.

1 THE WITNESS: Are you waiting for an answer?

2 MR. HOWARD: No, I've got the answer. I just wanted  
3 to...

4 Your Honor, may we approach and give him a copy of the  
5 deposition? We're having trouble getting it on the screen.

6 THE COURT: That's fine.

7 A. From what I did see, yeah.

8 Q. (By Mr. Howard) Okay. Here's the answer: "Yes, I called  
9 the tug, and I called Dan afterwards, and I said, 'We don't even  
10 want to take a chance on that.'"

11 And then, "Okay."

12 "Then we started looking to options for telling some  
13 companies that could help us in Monterey to come down to the  
14 bay, if we needed to do that."

15 So you made those calls --

16 A. Yes.

17 Q. -- and you informed Vigor afterwards?

18 A. Yes.

19 Q. Okay.

20 And I don't want to go into the rest of it. I just needed  
21 to establish that portion of it.

22 A. Yes.

23 Q. You never discussed sanctuaries with Vigor, either, did  
24 you?

25 A. No, not at that time, no.



1 Q. And that's not something you would expect them to know  
2 about, is it?

3 A. No. None of us were looking at a chart at that time.

4 MR. HOWARD: Okay. Thank you. I have no other  
5 questions.

6 THE COURT: Mr. Simms, anything further?

7 MR. SIMMS: Yeah. Let's just go right at the "looking  
8 for options, telling some companies."

9 REDIRECT EXAMINATION

10 BY MR. SIMMS:

11 Q. "Looking for options and telling some companies." Was it  
12 you or Vigor who called Global Diving?

13 A. It was not me.

14 Q. Okay. Was it Western or Vigor that called Global Diving?

15 A. It was Vigor.

16 Q. Was it Western or Vigor that called Greger Towing?

17 A. It was not Western, no.

18 Q. And so you had some ideas about options. Was it Vigor that  
19 then executed on putting those options in operation?

20 A. Yes.

21 Q. Did you -- to punctuate this a little bit, I'll risk being  
22 facetious.

23 Did you make the airline reservations for Dan Keen to come  
24 to San Francisco?

25 A. No.

1 MR. SIMMS: Okay. No more questions.

2 THE COURT: Mr. Shrewsbury, thank you. You may step  
3 down. You're free to go.

4 Counsel, we're at the end of our day. Who are you  
5 expecting to call as witnesses?

6 MR. SIMMS: We'll call Russ Shrewsbury, to start off  
7 with. Then I think we will go with Dr. Hudson by telephone.  
8 Then we will go with Dr. Kriebel, and then we will go with  
9 Captain Fox. And, oh, I'm sorry. In there somewhere is Mike  
10 Naylor.

11 THE COURT: All right. You're quite aware of my  
12 schedule. My schedule is pretty jammed with criminal matters,  
13 so I anticipate that will take probably the bulk of the day.

14 MR. SIMMS: I've been losing bets on whether I can get  
15 things done fast enough. So I think that's right, Your Honor,  
16 it will.

17 THE COURT: So to help us in terms of scheduling, how  
18 long would Vigor anticipate their witnesses will take?

19 MR. JARRETT: Your Honor, at the risk of talking  
20 without my partner's knowledge, we have mostly experts left to  
21 testify. And I think if we can negotiate the stipulation or  
22 proffer that we've been talking to Mr. Simms about on another  
23 matter, then I think a day.

24 I mean, now, I'm not speaking for Mr. Simms on  
25 cross-examination, but a day, day and a half. I think a day and

1 a half is probably what we should reserve.

2 THE COURT: All right.

3 All right. I'll see you at nine o'clock tomorrow morning.

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5 (Proceedings adjourned at 4:20 p.m.)

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## C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 2nd day of August 2021.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR  
Official Court Reporter